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ABSTRACT

A guide for secondary school social studies teachers provides materials suitable for a 10-week course on law or individual lessons on specific topics which may be covered in the social studies curriculum. Material is organized according to topics. Topic I, "What Is Law?" contains lessons on defining law, reasons for writing laws, and the relation of values to law. Topic II, "Types of Courts and Cases," contains lessons on types of courts and types of cases. The five lessons in topic III, "The Judicial Process," are on arrest and booking, initial appearance and bail, plea bargaining, trial procedure and mock trial, and sentencing. Topic IV consists of a lesson on law enforcement. Topic V, "Corrections," covers the corrections systems, probation, parole, and problems in the correctional system in separate lessons. "Justice and the Law," topic VI, contains lessons defining justice, considering the application of justice, and examining the role of the U.S. Supreme Court in the justice system. For every lesson, objectives, teacher information, vocabulary, and at least three student activities are provided. A glossary, bibliography, audio-visual list, and community resource list are also included. (LP)

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WHAT'S LAW?

SUMMER 1984

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INTRODUCTION

This guide has been developed with you, the teacher, in mind. The topics covered provide enough materials for use in a 10 week unit on law or can be used to teach individual lessons on specific topics as they fit your school's social studies curriculum. We have tried to provide the teacher with enough background material to feel comfortable in teaching the topic of law even if there has been no previous experience. A glossary, bibliography, AV list and Community Resource list has been provided to further simplify the task of finding further materials. It is our desire that this guide will provide a stepping stone for more law-related education in our BOCES District.

We would like to take this opportunity to acknowledge the assistance provided by Lt. Lee Price and the Cortland County Sheriff's Department in the development of the slide and tape presentation included in this guide. A special thank you to Peter Adams of Cortland High School for allowing us to use his mock trial materials. Also we wish to thank all those at the Cortland-Madison BOCES for their assistance especially Sharon Lanphear who had the trememdous task of typing and compiling this guide.

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OBJECTIVES:

1. The student will be able to give a definition of law.
2. Given a variety of situations, the student will be able to recognize that laws impact upon every aspect of life.
3. The student will be able to recognize that there are different types of law.

INFORMATION FOR TEACHERS:

1. Definitions of Law
    - a. "Set of rules or regulations by which a government regulates the conduct of people within a given society" Street Law
    - b. "That which must be obeyed" Oran's Dictionary of the Law
    - c. "Generally, those rules by which a nation governs itself and which every citizen of the state is bound to obey." Family Legal Guide
    - d. "Laws reinforce values" Update
2. Types of Legal Systems
    - a. Common law developed from court decisions in which common sense and good conscience were used. In essense, judges have the power to create laws by their decisions, which serve as guides and precedents in deciding subsequent trials.
    - b. Civil law is based chiefly on laws passed by legislative bodies.
3. Types of Laws
    - a. Private law - concerned with the rights and obligations of people in dealing with each other.
        1. contracts
        2. property
        3. inheritance
        4. torts
        5. family law
        6. corporation law
    - b. Public Law - concerned with rights and obligations of people as members of a society and citizens of their country.
        1. criminal law
        2. constitutional law
        3. administrative law
        4. international law.

VOCABULARY:

administrative law
civil law
common law
constitutional law
contract law
corporation law
criminal law
family law
inheritance law
international law
law
property law
precedent
torts

ACTIVITY A: Define Law

Procedure:

1. Small group discussions - have each group come up with their own definitions of law.
2. Bring them back together, place definitions on board, discuss, and formulate a consensus definition.
3. Compare and contrast this definition with those listed under information for teachers.

CTIVITY B: A Day in an Individual's Life

For Assignment:

- Have each student list all things that he or she does during the day. Have them then indicate whether or not the acitvity is related to law.

Day One:

- Select two or three students and put their list on the board. As a class, indicate what activities pertain to law. Discuss why the class believes that these activities do pertain to law by indicating a law.

Day Two:

- Collect the rest of the lists from the students.
- Put their lists on a ditto. Hand these lists out, and as a follow-up lesson on Day Two, go through and indicate which activities are law related by indicating a law.

ACTIVITY C: Wallets-Purse Activity

1. The Wallet/Purse Activity: working in small groups, each student is asked to select three items from his/her wallet or purse. These items should be considered to be important to the particular student. Students should record the three items in the appropriate spaces on Worksheet 1 (next page). Then, students should share their list of items within their group so that each group develops a common list of ten items. One group may then be chosen to read their list of items while the teacher records it on the chalk board. Other groups may then add other items not already mentioned. Next, groups are asked to discuss and record the types of laws which are directly or indirectly related to the ten items on their group's list. This task should be accomplished through a combination of peer teaching and teacher assistance to groups and students. The entire class may then share their answers and the teacher should focus on those items which provided difficulty. It is essential that the teacher demonstrate that every item has at least an indirect relationship to the law.

2. The Car Activity: (Optional--may be used as reinforcement during class or for homework if students need additional study) students are asked to brainstorm (see methods sheet, "Brainstorming") a list of items associated with owning and operating a car. Repeat the discussion procedures above.

3. At the end of the lesson, have each group develop a generalization which summarizes what they learned. Generalizations should include that laws affect every aspect of their lives.

ACTIVITY C: STUDENT WORKSHEET

THE WALLET/PURSE ACTIVITY:

List of Items: Types of Related Laws

Your 1. ______________________ ______________________

List 2. ______________________ ______________________

3. ______________________ ______________________

Other 4. ______________________ ______________________

Items 5. ______________________ ______________________

Listed 6. ______________________ ______________________

by the 7. ______________________ ______________________

Class 8. ______________________ ______________________

9. ______________________ ______________________

10. ______________________ ______________________

THE CAR ACTIVITY:

List of Items: Types of Related Laws

Your 1. ______________________ ______________________

List 2. ______________________ ______________________

3. ______________________ ______________________

Other 4. ______________________ ______________________

Items 5. ______________________ ______________________

Listed 6. ______________________ ______________________

by the 7. ______________________ ______________________

Class 8. ______________________ ______________________

9. ______________________ ______________________

10. ______________________ ______________________

CONCLUSION: DEVELOP A GENERALIZATION BASED ON TODAY'S CLASS:

____

____

ACTIVITY D: Types of Law

Procedure

1. Hand out the worksheet that follows.
2. Have the students give a definition and an example of each type of law.
3. For discussion and/or assignment answer the following questions:
    - Can any of these laws overlap? Explain how.
    - Should all laws be written down?
    - Are any laws unenforcable?
    - What role does customs-history-culture play in the writing of law? In the enforcement of law?

CTIVITY D: Types of Law Student Worksheet

"Legal Systems	Definition	Examples
Common Law		
Civil Law		
Laws		
- Private law		
a. contract		
b. property		
c. inheritance		
d. tort		
e. family		
f. corporation		
- Public law		
a. criminal		
b. constitutional		
c. administrative		
d. international		

OBJECTIVES:

1. The student should find the topic of laws and rights and responsibilities of citizenship one that concerns them, as shown by their active participation in law-related learning activities.
2. The student will be able to show that society seems to need laws.
3. The student will be able to list and explain four main reasons why laws are written.
4. The student will be able to show that law performs services for the community/state/nation.
5. The student will be able to demonstrate that the school community have laws (rules) by which it functions.
6. The student will be able to list rules of their school, and will be able to indicate a reason or reasons for the rule.
7. The student should be able to describe certain limitations on the power to enact criminal legislation (e.g. the need for notice and fair warning, prohibition or punishment of a person because of his status rather than his actions, etc.)

INFORMATION FOR TEACHERS:

1. Suggested reasons for laws
   a. restraint of the population
   b. restraint of the government
   c. protecton - but for whom?
      1. society
      2. individual
      3. groups over other groups
      4. the majority over minorities
         a. whites vs. American Indian
         b. The Nuremburg Laws (1935)
         c. The Jim Crow Laws
      5. minority over majority
         a. whites over blacks with its policy of apartheid in South Africa
         b. communists over the rest of the population in Soviet Union
   d solve problems - examples
      1. Discrimination/Reverse Discrimination
      2. Drinking and Driving
      3. Transportaion Bond Issue
   e. utilitarianism - Supply the Greatest Happiness for the Greatest Number
   f. maintenance of order
   g. provide for freedom

2. Suggested Questions
   a. What rights does/should an individual have?
   b. What responsibilities does/should an individual have?
   c. Does the society (those in charge and/or the aggregate whole) have the right to do what it pleases in order to help the individual and/or the society, even if it infringes upon the rights of certain members of the society? In other words, how far can the society go in its promotion and protection?
   d. Can a law try to do too much?

e. Can a law not do enough?
f. Can those who write laws go too far in the control of its populace?
g. Can the demand for and the desire to safeguard for individual rights affect, either beneficially or adversely, the entire society?
h. What are the effects of individual rights upon the American Justice System?
i. Are there unnecessary rules or laws?
j. Are there rules in a school that seem to be unnecessary and unfair, and arbitrary and capricous? What are the purposes of these rules?
k. Do students have rights?

VOCABULARY:

apartheid
civil liberties
discrimination
due process
in loco parentis
Jim Crow Laws
Nuremberg Laws
restraint
reverse discrimination
utilitarianism

CTIVITY A: "SPLIN AKTVET"

Directions like the following should be written on the board before class begins:

---

1. Read the stori "Enuf for Everiwun" on paj fifti-wun
2. Ansur kwentunz wun thru twente on paj sixte to.
3. Make a kroswurd puzl for the Vokabulari wurdz.

As soon as the class sees these weird directions on the board they will begin to question you about them. The teacher can then ask the class why they think she might have done this. The point to bring out here is that if everyone spelled words according to his own set of rules, we would soon become very slow readers because we would be constantly translating each printed. page.

Ask what might happen in our day to day living if everyone followed his own spelling system. The following are some of the answers you might get news commentators stumbling through the evening news, families puzzling over the newspaper, mother misreading directions for a recipe, and so forth. Encourage other answers. Guide the discussion around to the idea that a uniform spelling system is certainly helpful, if not completely necessary for rapid communication among people.

Next, ask students what would happen in their home town if there were no laws governing us. This should start some wild speculation. Students should see that in the long run this would be a chaotic situation. Point out that laws are set up to help groups of people live together.

ACTIVITY B: Why Rules?

Materials needed: 2 small balls

Ask six or eight students to go into the hall and divide themselves into two groups. (Do not tell them how to ogranize themselves or what will happen when they come back.)

After they have gone outside, tell rest of class to call out, "go, go," "win, win," as soon as you toss a ball to each group.

When two groups come in, put one group in one corner, and the other group in another corner. Then, throw a ball to each group, following which the class calls out, "go, go," win, win," and claps and cheers. Watch what the two groups do.

Questions for follow-up:

1. How did the group members feel? What did they need to know that they didn't know?
2. How did groups organize themselves? By six, by size, or by friends? Were the groups equal in number? Would they have organized differently if they had known the rules of the game?
3. Can you think of other situations where it would help to know rules in advance? (e.g. in games and sports, in driving bicycles and automobiles, in purchasing goods and services, in manufacturing products like foods, automobiles, etc.)

CTIVITY C: Panel/Group Discussion - Philosophies

Procedure:

Day One:

1. Select two groups of students; four in each group. Each student is to write a paragraph on why there are laws. The teacher is to inform each group separately that their paragraph (response) is to be based on two conflicting philosophies. These philosophies are
   a. "All men are created equal, that they are endowed with certain inalienable rights, ..."
   b. The state comes above the individual, that it is all important.
   Group A is to take the A philosophy.
   Group B is to take the B philosophy.

2. Each student of the two groups then present their response to the class.

3. After the presentations have a class discussion as to the purposes of law as seen in the Groups' responses.

Day Two:

Ditto the responses of the groups to hand out to the class the next day. Have the students discuss either orally or in writing a justification for law using the two different sets of responses.

ACTIVITY D: Do Students Have Rights?

Procedure:

1. Read: Teacher Reading

   Give each student a copy of the Fortas quote and the two quotes below.

   > [T]he constitutional rights of adults and juveniles are not co-extensive.... "The state's authority over children's activities is broader than over the actions of adults"....[T]he conduct of minors may be constitutionally regulated to a greater extent than that of adults.

   Federal District Court Judge Sheridan in Bykofsky v. Borough of Middletown (1975)

   > It is abundantly clear from the development of law over a period of two centuries or more that the relationship of the state to children is a parental one ...[T]he state stands in loco parentis to children in school. Thus a child has no more right to defy the school than does his own parents.

   Federal District Court Judge Young in Cordova V. Chonko (1970)

2. Discuss each quotation, using such questions as:

   How are the words "child" and "adult" defined in your state (e.g. in Ohio a "child" is a person under the age of 18.)

   In what ways does the law provide different treatment for "children" and "adults"? (e.g., contracts, property, inheritance, capacity to commit crimes. See Alan N. Sussman, The Rights of Young People [Avon Books, 1977] for further information.)

   To what extent are parents free to impose rules and regulations on their children? Should Bill of Rights protections apply to family members in the privacy of the home?

   In what ways could the school be said to act in loco parentis (in the place of parents)? How do the roles of parent and school differ? Should Bill of Rights protections apply in the school?

3. Use a piece of oaktag or chart paper to prepare a chart, then ask students to compare and contrast the legal obligations of adults, parents, children, school officials, and students. Encourage them to suggest reasons for similarities and differences, and write their responses for each of these five groups. Display in a prominent place in the room and refer to it as the unit progresses.

ACTIVITY D: Do Students Have Rights? Teacher Reading

TEACHING ABOUT STUDENT RIGHTS AND RESPONSIBILITIES

What Every student (and teacher) should know:

Student rights and responsibilities is a hot topic in our society. Within the past 10 years, court decisions have helped transform it from a largely ignored and discredited subject to a subject of vital importance, capable of arousing strong emotions among students, parents, teachers, and school administrators.

Despite (or perhaps because of) its pervasive and volatile character, teachers often give student rights and responsibilities a wide berth in the classroom. Some think it's unworthy of discussion, too frivolous and too far removed from "important" subject matter to be given valuable class time. Others see it as too controversial for classroom discussion, a veritable Pandora's box capable of inflaming student passions and engendering community wrath. And still others imagine that it is too complex to deal with intelligently, requiring more knowledge than teachers can be reasonably expected to have.

In actuality, student rights and responsibilities is neither too frivolous, too controversial, or too complex. Properly handled, the subject can illuminate a host of vital issues and become an integral part of the school curriculum. Here's a structure for dealing with student rights and responsibilities, a range of issues and approaches that can be used to teach students about this topic effectively.

A Rationale:

Perhaps the best response to the questions, "Why should I teach about student rights and responsibilities?" is simply, "You should teach about it because it's too important to ignore." Student rights and responsibilities is an excellent vehicle for helping students clarify and critically examine some of the most basic values of our society, some of the most fundamental characteristics of our legal system, and some of the most important developments of our society. Furthermore, as Alan Levine and Eve Carey observe in their very informative and useful book, The Rights of Students (Avon Books, 1977), students spend a large part of their lives in and around schools.

> [T]he policies that govern the school have as much impact on students' lives as most policies formulated by the President and Congress have on the lives of adult citizens. It is as important, therefore, for students to be able to discuss school policies openly as for adults to be able to debate freely issues of national policy.

Student rights also serve as a vehicle "for exploring moral and ethical reasoning, and for fostering a search for effective ways to deal with contemporary value conflicts." (Values, Law-Related Education and the Elementary School Teacher, NEA, 1976.) By studying the evolution of student rights and responsibilities, students become more aware of how change occurs and more capable of understanding the importance of change in the life of our country. By using student rights and responsibilities as a focal point, teachers can help students understand everything from constitutional law to administrative regulations, from judicial review to judicial remedies.

And you can teach about student rights and responsibilities. A growing number of books, journals, articles, and other resources - both print and nonprint - are available. I've noted a number of them in this article. And many law-related courses and workshops deal with student rights and responsibilities. One way to find out what's available in your area is to contact the ABA's Special Committee on Youth Education for Citizenship (YEPC), at 1155 E. 60th St., Chicago, Ill, 60637.

We have come too far, learned too much, and produced too many resources for the myth of legal complexity to serve as an effective deterrent. The remainder of this article, therefore, is designed to suggest an approach to teaching about student rights and responsibilities and to provide examples of a variety of teaching strategies that you can put to work in your classroom.

ACTIVITY D: Do Students have Rights? Student Reading

Classification or Capacity? Do Students Have Rights?

Before looking at student rights cases, teachers should provide a broader perspective. The development of student rights can be described as the move from a classification to a capacity, an evolutionary history which has much in common with other groups in American society. For example, in the famous case of Dred Scott V. Sandford (15 L. Ed. 69) [1857], the Supreme Court defined the legal status of a slave. Speaking for the Court, Chief Justice Roger Tancy wrote:

> The only matter in issue before the court, therefore is, whether... [slaves] are citizens of a State, in the sense in which the word "citizen" is used in the Constitution of the United States... We think they are not, and that they are not included under the word "citizen" in the Consitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.

Depriving slaves of rights accorded to citizens was not an isolated instance. As a result of being classified as "women," "juveniles", "prisoners", and "students", other groups have been denied the constitutional rights of citizens.

The importance of being classified in such a way is that once you're included in the group, the issue of rights becomes moot; it is no longer germane. It is not surprising, therefore, to find that in the landmark case involving student rights, Tinker V. Des Moines Independent School District (393 U.S. 503), Justice Abe Fortas, writing for the Supreme Court, acknowledged this legacy. He wrote:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.

Th movement of students from a classification to a capacity, a history shared by the other groups listed above, reveals one of the most fundamental characteristics of our legal system and of our life as a country - the concept of change. By studying student rights and responsibilities from this perspective, students increase their ability to understand the society in which they live and the kinds of concerns, value conflicts, and mechanisms that are part of how society changes.

ACTIVITY E: What Obligations Do Students Have?

Many educators stress the importance of student responsibilities and bemoan their lack of acceptance. Seldom, however, do educators provide opportunities for students to discuss these responsibilities. The exercise below suggest one way this might be accomplished. The items are based upon the 1974 NCSS Position Statement on Student Rights and Responsibilities. (See Social Education, April, 1975, pp. 241-245.)

Sample Lesson:

Topic: How Important a Responsibility?
Strategy: Rating Scale
Directions: Listed below are a number of different responsibilities that students are said to have. Indicate the importance of each by circling the appropriate number on a five-point rating scale, where 1 = Important and 5 = Not Important.

1 2 3 4 5 A. To attend school regulary.
1 2 3 4 5 B. To take care of school property.
1 2 3 4 5 C. To conform to school rules and regulations.
1 2 3 4 5 D. To accept the consequences of one's own behavior.
1 2 3 4 5 E. To volunteer information to school officials upon request.
1 2 3 4 5 F. To refrain from interfering with the education of other students.
1 2 3 4 5 G. To be courteous to school officials and fellow students.
1 2 3 4 5 H. To do one's school work conscientiously.
1 2 3 4 5 I. To avoid encouraging other students to engage in inappropriate behavior.
1 2 3 4 5 J. To respect the opinions and ideals of others.

NOTE: Student Actitivy Sheet (next page)

Procedure:

1. Distribute a copy of the exercise to students and clarify directions for its completion.
2. Tally and then discuss student responses. Encourage students to suggest other responsibilities they might have.
3. Discuss such questions as (a) What is the relationship between student rights and responsibilities? (b) Should rights and responsibilities vary with age - e.g. Should they be the same for primary students as for high school students? (c) How are responsibilities determined?
4. Use this exercise to help students assess the degree to which they meet their responsibilities. Suggest the exercise be titled, "How Responsible Am I?" and the rating scale be changed to 1 = Always and 5 = Never. In order to respect student privacy do not collect or tally student responses.

CTIVITY F: The Silent Teacher

"Begin the class with no directions whatsoever. Simply remain seated at your desk and ignore students. Allow students to become puzzled and confused. Then, after sufficient time, ask the students what they have experienced. Relate this to a society without direction or rules.

BJECTIVES:

1. The student will be able to demonstrate by examples that the opinions of people are a reflection of one or more values that they hold.
2. The student will be able to define the term values and be able to state examples of some values, and will be able to identify one or more values reflected in human actions.
3. The student will be able to give examples of how law changes values, values change law, and give examples.
4. The student will be able to give specific types of law, recognize a value upon which it is based, and vice versa.
5. The student will be able to give examples of how various opinions of the law reflect your values.
6. The student will be able to, through examples show that laws and values come into conflict.
7. The student will be able to explain that the judicial process resolves legal value conflicts.
8. The student will be able to show that values are imposed by those in power.
9. The student should find the topic of laws and rights and responsibilities of citizenship one that concerns them, as shown by their active participation in law-related learning activities.
10. Students should be able to list and defend arguments for and against given actions, rules, or laws.
11. Students should be able to articulate and clarify views on issues of personal importance when discussing a real or hypothetical case.
12. Students should be able to determine whether a particular rule or law and its consequences is consistent with its purpose and whether it may create more serious problems.

INFORMATION FOR TEACHERS:

Food for Thought:

"There are two basic approaches to law. One holds the might is right. In the other, conscience dictates law; the law should be what is fair and just.

Our democracy is dedicated to the second approach. It's jurisprudence, like any body of law has implicit in it the power of enforcement. In our democracy, the citizens delegate power to their legislative representatives and expect them to make laws that are fair to all and that protect the weak..."

"With the Justice for All"
by Graham Berry

"In most communist countries, the law permits the government to intervene in the private affairs of people and restricts the rights of people."

"With Justice for All"
by Graham Berry

"The Anarchists believed that with Property, the monarch of all evil, eliminated, no man could again live off the labor of another and human nature would be released to seek its natural level of justice among men. The role of the State would be replaced by voluntary cooperation among individuals and the role of the law by the supreme law of the general welfare. To this end no reform of existing social evils through vote or persuasion was of any use, for the ruling class would never give up its property or the powers and laws which protected ownership of property.

Therefore, the necessity of violence. Only revolutionary overturn of the entire malignant existing system would accomplish the desired result. Once the old structure was in rubble, a new social order of utter equality and no authority, with enough of everything for everybody would settle smilingly upon the earth."

Anarchism

"Whoever lays his hand on me to govern me'" Proudhon proclaimed, "is a usurper and a tyrant; I declare him to be my enemy ... Government of many by man is slavery'" and its laws are "cobwebs for the right and chains of steel for the poor..." To be governed is to be watched, inspected, spied on, regulated, indoctrinated, preached at, controlled, ruled, censored, by persons who have neither wisdom nor virtue... Under pretext of the public good it is to be exploited, monopolized, embezzled, robbed and then, at the least protest or word of complaint, to be fined, harassed, vilified, beaten up, blugeoned, disarmed, judged, condemmed, imprisoned, shot, garroted, deported, sold, betrayed, swindled, deceived, outraged, dishonored..."

The Proud Power
by Barbara Tuchman

"Plato's most famous work, The Republic, describes an imaginary land in which each man does the work for which he is best fitted. Plato believed that there should be three classes of people: the workers to produce the necessities of life, the soldiers to guard the state, and the philosophers to rule in the interests of all. Private property was to be abolished and education was designed for the benefit of the rulers."

Living World History
by T. Walter Wallbank
Arnold Schrier

VOCABULARY:

- actions
- anarchism
- constitutional rights
- democracy
- due process
- equal protection
- exclusionary rule
- Gitlow Doctrine
- media
- philosopher King
- privacy
- protection
- reserve powers
- right to know
- totalitarianism
- unconstitutional
- values
- values conflict

ACTIVITY A: What are Values?

1. Have students complete items 1-5 on the accompanying worksheet.
2. Tally the results on the board.
3. Discuss briefly some of these ideas, focusing on the opinions held by the students. (It is only necessary at this point to bring out diverse opinons on the statements.)
4. Have students complete the questions following the worksheet and discuss their responses.

ACTIVITY A: Student Worksheet

Directions: Listed below are a series of statements relating to a variety of current controversial issues. Read each statement below and then, circle the number that best reflects your opinion about the statement.

1. I strongly agree
2. I mildly agree
3. I am neutral about this
4. I mildly disagree
5. I strongly disagree

1. The only people in the United States that should be allowed to have guns in their possession are police officers and military personnel. 1 2 3 4 5

2. People who commit serious crimes such as murder and kidnapping should be executed by the state authorities. 1 2 3 4 5

3. Women in the United States should not be allowed to have an abortion. 1 2 3 4 5

4. Our prisons only serve to produce more criminals, not rehabilitated citizens, and should therefore be drastically changed. 1 2 3 4 5

5. Juveniles over the age of 13 who commit crimes should be treated the same as adult criminals. 1 2 3 4 5

A. What is it that the differing opinions you have expressed reflect?

B. Name some other topics in which people have conflicting opinions.

C. What are values?

D. List as many values as you can.

E. How do values reflect your behavior?

ACTIVITY B: Values and Laws - Actions and Values

Procedure:

1. Have the students complete I and II on worksheet. Compare and discuss answers. Be sure to allow students to explain their rationale, for sometimes their answers may appear to be the opposite value of what the law seeks to protect. For example, students might view capital punishment laws as protecting life if they feel this deters murder. A teacher's guide of the worksheet is included.
2. Have student complete III on the bottom of the worksheet. Compare and discuss answers.

CTIVITY B: Student Worksheet

I. Directions: Below are a few types of law that exist today.

I. In the column titled "Reasons," briefly write a phrase which you think describes a main reason why each law was passed.

2. Using your reason for each law, state a value on which each law is based:

TYPES OF LAWS	REASON	VALUE
1. Social Security Act		
2. Capital Punishment		
3. Pure Food and Drug		
4. Anti-Trust Laws		
5. Prohibiting Theft		

II. Directions: Below is a list of some values held by many people in our society. There are numerous types of laws which are related to these values. List one type of law for each value (Do not use any of the examples above).

VALUES	TYPES OF LAWS
1. Property	
2. Social Order	
3. Privacy	
4. National Security	
5. Patriotism	

Generalization: How are laws and values interrelated? ______

III. A. Which of the examples of laws under I did not exist over 100 years ago in the U.S.? ______

B. Applying the terms "values" explain a general reason why those laws did not exist over 100 years ago. ______

ACTIVITY B: Teacher's Answer Key

I. Directions: Below are a few types of law that exist today.
1. In the column titled "Reasons," briefly write a phrase which you think describes a main reason why each law was passed.
2. Using your reason for each law, state a value on which each law is based:

	TYPES OF LAWS	REASON	VALUE
1.	Social Security Act	Protect elderly, disabled	Elderly, compassion
2.	Capital Punishment	Prevent murder	Life, justice
3.	Pure Food and Drug	Protect consumers	Health, safety
4.	Anti-Trust Laws	Protect small businesses	Competition
5.	Prohibiting Theft	Protect our property	Property

II. Directions: Below is a list of some values held by many people in our society. There are numerous types of laws which are related to these values. List one type of law for each value (Do not use any of the examples above).

	VALUES	TYPES OF LAWS
1.	Property	Zoning, burglary, arson
2.	Social Order	Disturbing the peace, criminal laws
3.	Privacy	No-knock laws, warrants, trespassing
4.	National Security	Related to national defense, military, C.I.A., F.B.I
5.	Patriotism	Flag display, social studies curriculum

Generalization: How are laws and values interrelated? Numerous possibilities

III. A. Which of the examples of laws under I did not exist over 100 years ago in the U.S.? 1, 3, and 4

B. Applying the terms "values" explain a general reason why those laws did not exist over 100 years ago. Our values as a society have changed due to changes in technology, attitudes, urbanization, etc,

ACTIVITY C: Values Conflict

Procedures:

1. Select two students to roleplay "A Fine Kettle of Fish," as the others follow on their copies of Worksheet 5.
2. Discuss and summarize the facts of the case with the class.
3. Have students complete the questions, asking them to infer the reasons and values of Fanny and Hans. Obtain several answers to E until you develop a Grade II definition that is meaningful to everyone.
4. A. For the remainder of class, have groups select a controversial issue (such as those from Worksheet 2 and develop conflicting positions which two speakers might hold and the values which each reflects or
   B. As an extended lesson, each group could develop a play, short story, series of letters, etc., which represent conflicting values.

Teacher's Answer Key:

A.	What were Fanny's Views	What were Hans' Views
	She thought Mr. Mapp was treated unfairly	He believed criminals should be stopped by any methods
B.	Reasons for Fanny's Views	Reasons for Hans' Views
	She opposes invasion of privacy, favors individual right	His job, beliefs in society's rights, desire to prevent crime
C.	Fanny's Values	Hans' Values
	privacy and human dignity	law and order

D. Write a statement of the values conflict in this story. Hans' desire to enforce law and order conflicts with the right to privacy

E. What is a values conflict? see glossary

ACTIVITY C: Student Worksheet #1

A FINE KETTLE OF FISH"*

Act I, Scene I: Late in the evening of May 23, 1957: Officer Hans Fuzz has just returned home from patrol and is talking to his wife, Fanny.

Hans: "Well, tonight we had a little excitement on the job! We busted a woman on pornography.

Fanny: "Really! How did you catch her?"

Hans: "We were looking for a man connected with a recent bombing when we got a tip that he was hiding in her house. She called her lawyer and wouldn't permit us to enter the house. We got a warrant and when we presented it, she grabbed it and shoved it down her dress. What could I do, but get it out of there?

Fanny: "You mean to tell me that you went down her dress to get the warrant! I can't believe it! There must be a law against that?"

Hans: "She was acting in a very suspicious manner so we knew that something was going on."

Fanny: "You think that is a good enough reason to search her?"

Hans: "But Fanny, she didn't cooperate with us; all we wanted was to look for that bombing suspect."

Fanny: "Well, I'm too tired now to listen to all the details -- I've been helping Junior cram for his law boards. You can finish telling me in the morning."

Scene II: Next morning at breakfast, Hans and Fanny are discussing an article in the newspaper about the arrest of Mrs. Mapp.

Fanny: "You didn't tell me that you pushed the lady around. What right did you have to handcuff her and search through her belongings? Then you find a few pieces of paper which you claim are pornography and book her on that!"

Hans: "But Fanny, we had no choice; we knew she was hiding something."

Fanny: "Why? Because she insisted on a warrant? Because she didn't want to let you in? You broke down her door. What kind of a job is this? You violated the poor woman's rights!" (Fanny walks across the room and picks up one of Junior's law books).

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*By: Nancy Diefendorf and Leslie Coon
Westhill High School, Syracuse, NY, Class of '76

ACTIVITY C: Student Worksheet #2

Fanny: (Reading from the law book) "The Fourth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." "Hans, I don't think I can live with man who uses his badge to bully defenseless women! I'm going to live with mother!"

Hans: "But, but . . . ."

Act II, Scene I: A reconciliation had occurred a few days later. Also, Mrs. Mapp was found guilty in the State Trial Court. It is about four years later. Both are eating breakfast.

Fanny: "See, I told you so! Mrs. Mapp, the defendant in that trumped up pornography charge, finally won her case on appeal in the U.S. Supreme Court.

Hans: "I don't believe it! Maybe our search wasn't totally legal, but they should have used the porno material as evidence. Down at the precinct, the captain said that back in '49 the Wolf case ruled that illegally obtained evidence could be used at a state trial. He said that the Fourth Amendment that you quoted to me applied only to federal cases."

Fanny: "Well it says here (pointing to the paper) that the Fourth Amendment protection applies to states through the due process clause of the Fourteenth Amendment. Illegally obtained evidence can no longer be admitted into state trials.

Hans: "Well, that's a fine kettle of fish! I get paid to risk my life chasing these criminals and now the courts are going to let them off on some legal technicality. Next time it might be a murderer or rapist!"

A. What are Fanny;s Views ______________________	What are Hans' Views ______________________
B. Reasons for Fanny's Views ______________________	Reasons for Hans' Views ______________________
C. Fanny's Values ______________________	Hans' Values ______________________

D. Write a statement of the values conflict in this story. ______________________

E. What is a values conflict? ______________________

ACTIVITY D: Laws are Open to Different Interpretations

Procedure:

1. Pass out Activity D - Student Handout. Have students read. Make sure all students understand the basic information in the case.
2. Using Worksheet I have students write the arguments for each side, as well as their own opinions on each case; do not let them refer to the Court's opinions (worksheets 2 and 3), but encourage them to formulate their own reasoning by developing the values and legal bases of each side into a paragraph. To conserve time, each student (or group of students) may be assigned to write only one of the four arguments. You will need to duplicate class copies of all worksheets.
3. Distribute Worksheet 2 and compare students' reasoning with the Court's opinion. Discuss the questions on the bottom of the page. Repeat the process for Worksheet 3. (You should emphasize that the Court's decision in these types of cases may change with time or the facts of a new situation. Students who reached decisions that differ from the majority opinion of the Court should be told that often in history dissenting opinions have later become the majority opinions.)
4. A final note - since the skills associated with this lesson are of paramount importance, this lesson should require additional time to complete.

Worksheet #2 - Teacher's Answer Key

Discussion Questions

1. What are the main reasons given for each of the two opinions?
2. Which opinion do you prefer? Why?
3. Which opinion do you think represents the majority opinion? Opinion II
4. This case involved a conflict between freedom of speech and the need for order. Can you think of other situations in school in which these values could conflict? In any of these other situations, would you think it might be better to emphasize the other value (For example, order rather than freedom)? What does you answer show you about resolving values conflicts?

Worksheet #3 - Teacher's Answer Key

Discussion Questions

1. What are the main reasons given for each of the two opinions?
2. Which opinion do you prefer? Why?
3. Which opinion do you think represents the majority opinion? Opinion I
4. What are some important similarities and differences between the Tinker Case and the Feiner Case?
5. In the Tinker Case the Supreme Court protected the value of freedom of speech when it conflicted with the value of social order; in the Feiner Case the Supreme Court protected the value of social order when it conflicted with the value of freedom of speech. What does this teach you about the way in which our legal system tries to resolve values conflicts? What does this show you about the freedoms and values contained in the Bill of Rights?

ACTIVITY D: Worksheet #1

Directions: Both the Tinker and Feiner cases were reviewed and decided by the U.S. Supreme Court. Attorneys for each side must write a brief containing their legal arguments. Use the actions, values and legal basis to develop an argument for each side in both cases.

TINKER VS. DES MOINES

Argument for Tinker: ____________

Argument for school officials ____________

FEINER VS. NEW YORK

Argument for Feiner: ____________

Argument for New York ____________

With which side in the Tinker case do you agree? Why? ____________

With which side in the Feiner case do you agree? Why? ____________

ACTIVITY D: Student Handout #2

THE TINKER CASE

John and Mary Beth Tinker, aged 13 and 16 respectively, attended public school in Des Moines, Iowa. In December, 1965, they and their parents attended a meeting to discuss ways of protesting the Vietnam War. The group decided to publicly wear black armbands as a symbol of their protest.

When the school principals heard about the decision at the meeting, they passed a rule that prohibited the wearing of an armband in school; those who would refuse to remove an armband would be suspended from school until it was removed. The principals stated that they hoped that his would prevent any disorder.

The Tinkers, aware of the new rule, wore their armbands to school. During the day no classes were disorderly and school went on as usual. Before the end of the day, however, the Tinkers went home because the school principal suspended them until they would remove the armbands. Their parents disagreed with the school's rule and actions, and took the case to court. Eventually, the case reached the U.S. Supreme Court.

THE FEINER CASE

In March of 1949, a college student named Irving Feiner made a speech on a downtown city street in Syracuse, New York. A crowd of about 75-80 people both blacks and whites, gathered to hear Feiner talk. During his speech Feiner said a number of insulting things about various politicians, local, state and national. In Feiner's words, the Mayor of Syracuse, the Mayor of New York City and President Truman were all "bums". In his speech, Feiner also commented that "the Negroes don't have equal rights; and they should rise up in arms and fight for their rights."

When the police arrived on the scene they (the two officers) expressed some concern with the flow of traffic in the area and the general restlessness of the crowd.

As Feiner continued speaking, a number of people in the crowd became increasingly angry and even threatened Feiner. At this point, one of the police officers asked Feiner to step down and end his speech. When Feiner refused to obey the policeman after being asked to step down a second time, the policeman arrested Feiner for disturbing the peace and disorderly conduct.

ACTIVITY D: Student Worksheet #3

THE TINKER CASE GOES TO THE U.S. SUPREME COURT

In 1969, the nine justices reviewed the briefs in the Tinker case and handed down a 7-2 decision. Below are portions of the majority and dissenting opinions of the Supreme Court.

Read both opinions and select the one that you prefer. Which one do you think was the majority opinion?

Opinion I

The school acted properly, ". . . if the time has come when pupils can defy orders of school officials . . .it is the beginning of a new revolutionary era. Public schools . . .give student opportunity to learn, not to talk politics . . . School discipline is an important part of training our children to be good citizens . . .(To decide in favor of the Tinkers could) subject all the public schools to the whims of their loudest mouthed, but maybe not their brightest, students."

Opinion II

The schools acted improperly. "The school officials sought to punish (the Tinkers) for silent, passive, expression of opinion, unaccompanied by any disorder. There is no indication that the work of any class was disrupted. Fear of a disturbance is not enough to over come the right to freedom of expression. (The school) must be able to show that its action was caused by something more than a mere desire to avoid the discomfort that accompanies an unpopular viewpoint.

Students in school as well as out of school are 'persons' under our Constitution. . . They may not be (limited) to expressing only those (views) that are officially approved."

Discussion Questions

1. What are the main reasons given for each of the two opinions?

2. Which opinion do you prefer? Why?

3. Which opinion do you think represents the majority opinion?

4. This case involved a conflict between freedom of speech and the need for order. Can you think of other situations in school in which these values could conflict? In any of these other situations, would you think it might be better to emphasize the other value (for example, order rather than freedom)? What does your answer show you about resolving values conflicts?

ACTIVITY D: Student Worksheet #3

THE FEINER CASE GOES TO THE U.S. SUPREME COURT

In 1951, the nine justices reviewed the briefs in the Feiner case and handed down a 6-3 decision. Below are portions of the majority and dissenting opinons of the Supreme Court.

Read both opinions and select the one that you prefer. Which one do you think was the majority opinion?

Opinion I

Feiner is guilty of disorderly conduct and his conviction shall stand. It is our opinion that Feiner by his actions, deliberately encouraged the audience to become divided into hostile camps; interfered with passing traffic; and refused the reasonable request of a police officer to step down and end his speech. Feiner, by his actions, had created a clear and present danger of riot or disturbance.

Opinion II

Feiner is not guilty of disorderly conduct and his conviction shall not stand. It is our opinon that Feiner in his actions was exercising his constitutional right of freedom of speech. To find Feiner guilty in this situation would result in allowing the police whenever and wherever they choose to serve as local censors of unpopular ideas and greatly restrict individual freedom of speech. The police had a clear obligation to protect Feiner's right to speak, even if this meant arresting individuals in the crowd who were causing a disturbance. Instead, they shirked their duty and only acted to suppress the right to speak.

Discussion Questions

1. What are the main reasons given for each of the two opinions?
2. Which opinion do you prefer? Why?
3. Which opinion do you think represents the majority opinion?
4. What are some important similarities and differences between the Tinker Case and the Feiner case?
5. In the Tinker Case the Supreme Court protected the value of ________________ ________________ when it conflicted with the values of ________________; in the Feiner case the Supreme Court protected the value of ________________ ________________ when it conflicted with the value of ________________. What does this teach you about the way in whhich our legal system tries to resolve values conflicts? What does this show you about the freedoms and values contained in the Bill of Rights?

ACTIVITY E: Conflicting Opinons on the Laws

Procedure:

There is a worksheet accompanying this activity. It and the overall activity purpose is to show how ones belief about the purpose of law will affect how laws are written and reduced. The teacher will have to present an analysis of the four ideas about the running of society or reproduce quotations and hand to students. (Refer to Pertinent Information). After a discussion of these four major ideas, have the students complete the worksheet. On the worksheet list what the person or persons think are the purposes of law, what they think will be the result and your opinion.

ACTIVITY F: Lost Island

Procedure:

Distribute copies of "Lost Island" shown below for each student to read. Then divide the class into groups of not more than twelve students. Each group is to pretend they are in the Lost Island situation and must consider what they want to do. Alllow groups 20-30 minutes to develop plans. Each group will then relate to the class what action they took. Rules and definite plans should evolve.

LOST ISLAND

All of you were on an airplane bound for India when a fierce storm swept the plane more than 1500 miles off course. Before the pilot was able to send a Mayday call, the radio was knocked out by lightning. The plane crash-landed in the ocean within swimming distance of an island. The plane sank after you all got free of the wreckage. The pilot and crew were killed in the crash.

All of you are on the island. The island is not on any map and is not near any shipping lanes. No one knows that the island exists! It is three miles long and three miles wide. Three-fourths of the island is made up of rocks and cliffs. One-fourth is vegetation. There are enough fruits and vegetables growing to feed all of you for four months. A pool of 500 gallons of fresh water that collected from the last rain is on the island. There is no freshwater spring. The island abounds with poisonous snakes and scorpions.

Taking inventory, you find that you have only what you are wearing and whatever is in your pockets. There is no way off the island.

As follow up or as an extended role play, build in crises and new problems for the group. The activity could be used for one class period or could extend for many days with the teacher posing new situations or crises each day (e.g. your leader was struck on the head and can no longer lead your group; you can see the clouds of a typhoon that will hit Lost Island soon; poisonous snakes are getting to be more serious threat; etc.)

ACTIVITY F: Student Handout

LOST ISLAND

All of you were on an airplane bound for India when a fierce storm swept the plane more than 1500 miles off course. Before the pilot was able to send a Mayday call, the radio was knocked out by lightning. The plane crash-landed in the ocean within swimming distance of an island. The plane sank after you all got free of the wreckage. The pilot and crew were killed in the crash.

All of you are on the island. The island is not on any map and is not near any shipping lanes. No one knows that the island exists! It is three miles long and three miles wide. Three-fourths of the island is made up of rocks and cliffs. One-fourth is vegetation. There are enough fruits and vegetables growing to feed all of you for four months. A pool of 500 gallons of fresh water that collected from the last rain is on the island. There is no freshwater spring. The island abounds with poisonous snakes and scorpions.

Taking inventory, you find that you have only what you are wearing and whatever is in your pockets. There is no way off the island.

ACTIVITY G: What Does an Anarchist Believe? What do their beliefs imply toward law?

Procedure:

1. Hand out the two sheets on anarchism.
2. Have them read the handout and answer the questions following the readings.
3. Then discuss their responses in class.

ACTIVITY G: Student Handout #1

There are certain social philosophers today who believe that law is not really necessary to life in society. In a history of anarchism, George Woodcock points out that - (taken from The American Legal System, Ginn and Company, Unit I, pp. 7-8).

> the anarchist believes in a moral urge powerful enough to survive the destruction of authority and still to hold society together in the free and natural bonds of fraternity.
>
> . . .The (wiping out) of authority and government, the decentralization of responsiblity, the replacement of states and similar . . .organizations (with centralized power) by a federalism which will allow sovereignty (power) to return to the individuals of society--this is what in their various ways the anarchists have all desired, and such a desire necessarily requires a policy of simplification.

Alexander Berkman simplifies anarchism in these words:

> In the fewest words, anarchism teaches that we can live in a society where there is no compulsion of any kind.
>
> A life without compulsion naturally means . . .freedom from being forced or coerced, a chance to lead the life that suits you best.
>
> You cannot lead such a life unless you do away with the institutions that curtail your liberty and interfere with your life, the condition that compels you to act differently from the way you would like to.

Some modern-day socialist thinkers also foresee a society operating without law. A few years ago, S.A. Golunski, a Russian professor of law, described what life would be like under true communism. Some followers of Marx and Lenin call the strict government-controlled system of the Soviet Union today "state socialism",; they predict that true communist society will follow. Golunski wrote:

> . . .Side by side with norms of law and morality, there is still another line of norms--not identical with either law or morality--operating in society and likewise regulating human relations; customs. A custom is a rule of conduct observed in society by virtue of (long) habit--because it has been applied many times over a long period . . .
>
> In communist society--when capitalist encirclement shall have been destroyed and the state and law shall have withered away--it is custom (side by side with morality) that will regulate socialist relationships in place of law. Of communist society, Lenin said that in that society "people will gradually get the habit of observing the elementary rules of life together--rules known for ages and commonplace for thousands of years in all the copybooks--and observing them without violence . . . .
> without the special (force) which is called the state." These rules observed by force of habit will also be the customs of communist society . . .

ACTIVITY G: Student Handout #2

Jerry Rubin has also described a world without law in a somewhat more lighthearted manner.

> There will be no more jails, courts, or police . . .
> The world will become one big commune with free food and housing, and everything shared.
> All watches and clocks will be destroyed . . .
> There will be no such crime as "stealing" because everything will be free . . .
> There will be no more schools or churches because the entire world will become one church and school.

Based on the above readings -- answer the following questions.

1. What do the people quoted in this Handout feel is true about human nature? Do you agree?

2. What substitutes for law are either named or implied in the above quotations?

ACTIVITY H: Right to Know/Right to Privacy

Procedure:
The following activity is designed to have students weigh the right of the public to know and the individual's right or privacy. How and when should each right be limited, which in conflict with the other?

A CONFLICT OF VALUES

The following lesson is designed to have students weigh the right of the public to know and the individual's right of privacy. How and when should each right be limited when in conflict with the other?

Use the following chart to help students define the right to know and the right to privacy.

Questions	Public's Right to Know (Freedom of the Press)	Right to Privacy
What is it?		
Why is it important?		

After eliciting student responses by brainstorming write their responses in the appropriate cell of the chart. The intent of this exercise is twofold: one, to focus student attention on the salient issues of inquiry, and second, to provide teachers with information about what students already know and believe about these subjects. Some important points which are likely to emerge in the bottom cells are: (1) Right to Know - needed to vote intelligently; needed to evaluate public officials' actions; needed to permit citizens to influence decisions being made and actions being taken; (2) Right of Privacy - needed to protect the sanctity of one's home; needed to permit citizens to keep aspects of their personal lives secret; needed to feel free and safe.

Distribute the following exercise and have students complete it individually. Point out to students that there is not always a right or wrong answer. Stress that even lawyers and judges disagree over many of these issues.

SHOULD IT BE MADE PUBLIC

When students complete the exercise, divide the class into small groups of four to six students each. Tell the students to share their responses with the group and discuss the reasons for their selections. Have one person in each group rally the group's responses.

Reassemble as a large group and have each group report its tally. Discuss items of particular interest, and provide the opportunity for students to add other points to the chart completed earlier.

At the conclusion of class, synthsize student responses in each cell. Display the synthesized responses on newsprint or butcher paper and refer to the chart as the unit progresses. (Note: This activity chould be used again at the conclusion of the unit to both assess what students have learned and to reconsider attitudes that students initially expressed about these situations.)

ACTIVITY H: Student Worksheet: Should It Be Made Public?

Directions: Below are a series of situations which illustrate the conflicts between the right of the public to know something and the right of the individual to keep personal information private. Decide whether the information in each situation should have been made public or kept private. Circle the appropriate response.

1. A newspaper publishes the name, age, and address of a rape victim in a story about the crime. PUBLIC PRIVATE

2. Just prior to an election, a TV station reports that a local judge seeking re-election is being investigated by an ethics commission for improper judicial behavior. PUBLIC PRIVATE

3. A newspaper prints a story telling where star football players from area high schools may go to college. The story reports each student's grade point average, including those whose very low grades may prevent them from going to college. PUBLIC PRIVATE

4. A local radio station reports that the mayor fathered an illegitimate child. PUBLIC PRIVATE

5. While interviewing a labor official, a reporter observes a known member of organized crime enter the office and hand a large brown envelop to the official's secretary. The secretary appears very nervous and immediately places the envelop in the office safe. The report later includes this observation in her story about the official and his union. PUBLIC PRIVATE

6. A local TV station shows the picture of a person that police suspect of committing a serious crime, though the person has not yet been arrested. The station also gives his name and address. PUBLIC PRIVATE

7. A national magazine publishes a feature story on schools for emotionally disturbed children. The article includes pictures of children in several classes, and the name and location of the school. The names of the children are not included. PUBLIC PRIVATE

8. A national sports magazine publishes an article about a person said to be the most daring body surfer at a California beach. People interviewed for the article say the man eats spiders and others insects, can't read and dives off steps to impress women. PUBLIC PRIVATE

The following are summaries of Supreme Court cases that will be used in the Activities of the section. They have been reprinted here for teacher information and use.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that the exercise of the forbidden right would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained . . .

In the present case, the District Court made no such finding . . .

It is also relevant that the school authorities did no purport to prohibit the wearing of all symbols of political or controversial significance . . .Instead, a particular symbol . . .was singled out for prohibition . . . .

In our system, state-operated schools may not be enclaves of totalitarianism, School Officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution . . . In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

MR JUSTICE BLACK, dissenting.

. . .The Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are "reasonable" . . .if the time has come when pupils of state-supported schools, kindergarten, grammar school or high school, can defy and flaunt orders of school officials to keep their minds on their own school work, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary . . . Iowa's public schools . . .are operated to give students opportunity to learn, not to talk politics by actual speech, or by "symbolic" speech. . .School discipline, like parental discipline, is an integral and important part of training our children to be good citizens . . .One does not need to be a prophet or the son of a prophet to know that after the Court's holding today that some students in Iowa schools and indeed in all schools will be ready, able, and wiling to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins lie-ins, and smash-ins. . .Students engaged in such activities are apprently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials . . .it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without consitutional reasons in my judgment, subjects all the public schools in the country to do the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school systems in our 50 States . . . . I dissent.

Mapp v. Ohio, 367 U.S. 643; 81 S. Ct. 1684; 6 L. Ed. 2d 1081 (1961)

eveland police officers requested admission to a home to seek a fugitive who was reportedly hiding there. They had also received information that a large amount of policy paraphernalia was hidden in the house. Without a warrant, the police forced their way into the house. There they found obscene materials. This evidence was used to confict Miss Mapp in the state courts.

Opinion by Mr. Justice Clark
(vote 6-3)

Question - Is evidence obtained in violation of the search and seizure provisions of the Fourth Amendment admissible in a state court?

Decision - No

Reason - Previous decisions have held that the security of one's privacy against arbitrary intrusion of the police is implicit in the concept of ordered liberty and as such enforceable against the states through the due process clause. However, the Court has previously refused to exclude evidence thus secured from state courts as "an essential ingredient of the right." Since the Fourth Amendment's right of privacy has been declared enforceable against the states through the due process clause of the Fourteenth Amendment, it is enforceable against them by the same sanction of exclusion as is used against the federal government. All evidence obtained by searches and seizures in violation of the Consitution is, by that same authority, inadmissible in a state court.

orollary cases

Wees v. United States, 232 U.S. 383 (1914)
Elkins v. United States, 364 U.S. 206 (1960)
Benanti v. United States, 355 U.S. 596 (1957)
Rea v. United States, 350 U.S. 214 (1956)
Unites States V. Rabinowitz, 339 U.S. 56 (1950)
United States v. Janis, 428 U.S. 433 (1976)
McNabb v. United States, 318 U.S. 332 (1943)
Rochin v. California, 342 U.S. 165 (1952)
Irvine v. California, 347 U.S. 128 (1954)
Breithaupt v. Abram 352 U.S. 432 (1957)
Stefanelli v. Minard, 342 U.S. 117 (1951)
Ker v. California, 374 U.S. 23 (1963)
Linkletter v. Walker, 381 U.S. 618 (1965)
Washington v. Chrisman 70 L. Ed. 2d 778 (1982)
Donovan v. Dewey 69 L. Ed. 2d 262 (1981)
Steagald v. United States 68 L. Ed. 2d 38 (1981)
Colorado v. Bannister 449 U.S. 1 (1980)
New York v. Belton 69 L. Ed. 2d 768 (1981)
Robbins v. California 69 L. Ed. 2d 744 (1981)

NOTE: Mapp, which continues to be controversial, reversed Wolf v. Colorado, 338 U.S. 25 (1949). Mapp represents a still further extension of the "Gitlow doctrine," this time applying the Fourth Amendment by means of the "liberty" nd "due process" provisions of the Fourteenth Amendment.

Gitlow v. New York, 268 U.S. 652 (1925)

Mr. Justice Sanford delivered the opinion of the Court.

Benjamin Gitlow was indicted in the supreme court of New York, with three others, for the statutory crime of criminal anarchy . . .

The contention here is that the statute, by its terms and as applied in this case, is repugnant to the due process clause of the 14th Amendment. Its material provisions are:. . .Criminal anarchy is the doctrine that organized government should be overthrown by force or violence . . .The advocacy of such doctrine either by word of mouth or writing is a felony . . .The indictment . . .charged that the defendant had advocated, advised, and taught the duty, necessity, and propriety of overthrowing and overturning organized government by force, violence, and unlawful means, by certain writings therein set forth, entitled, "The Left Wing Manifesto." . . .The defendant is a member of the Left Wing section of the Socialist party, a dessenting branch or faction of that party, formed in opposition to its dominant policy of "moderate Socialism.". . .The sole contention here is, essentially, that, as there was no evidence of any concrete result following from the publication of the Manifesto, or of circumstances showing the likelihood of such result, the statute as construed and applied by the trial court penalizes the more utterance, as such, of "doctrine" have no quality of incitement . . .The argument in support of this contention rests primarily upon the following propositions: 1st, that the "liberty" protected by the 14th Amendment includes the liberty of speech and of the press; and 2nd, that while liberty of expression "is not absolute" it may be restrained "only in circumstances where its exercise bears a casual relation with some substantive evil, consummated, attempted, or likely," and as the statute "takes no account of circumstances," it unduly restrains this liberty, and is therefore unconstitutional . . .

The statute does not penalize the utterance of publication of abstract "doctrine" or academic discussion having no quality of incitement to any concrete action. It is not aimed against mere historical or philosophical essays. It does not restrain the advocacy of changes in the form of government by constitutional and lawful means. What is prohibits is language advocating, advising, or teaching the overthrow of organized government by unlawful means. These words imply urging to action . . .

The Manifesto, plainly, is neither the statement of abstract doctrine nor, as suggested by counsel, mere prediction that industrial distrubances and revolutionary mass strikes will result spontaneously in an inevitable process of evolution in the economic system. It advocates and urges in fervent language mass action which shall progressively forment industrial disturbances, and, through political mass strikes and revolutionary mass action, overthrow and destroy organized parliamentary government. It concludes with a call to action . . .

For present purposes we may and do assume that freedom of speech and of the press - which are protected by the First Amendment from abridgment by Congress - are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States . . .That utterances inciting to the overthrow of organized government by unlawful means present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the state . . . And the immediate danger is none the less real and substantial because the effect of a given utterance cannot be accurately foreseen. The state cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire, that smoldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the state is acting arbitrarily or unreasonably when, in the exercise of the judgement as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has kindled the flame or blazed into the conflagration . . .it may, in the exercise of its judgment suppress the threatened danger in its incipiency . . .

We cannot hold that the present statute is an arbitrary or unreasonable exercise of the police power of the state, unwarrantably infringing the freedom of speech or press; and we must and do sustain its constitutionality . . .

MR. JUSTICE HOLMES dissenting.

Mr. Justice Brandeis and I are of the opinion that this judgment should be reversed . . .I think that the criterion sanctioned by the full court in Schenck v. United States . . .applies. . .It is true that in my opinion this criterion was departed from in Abrans v. United States . . .but the convictions that I expressed in that case are too deep for it to be possible for me as yet to believe that it and Schafer v. United States . . . have settled the law. If what I think the correct test is applied, it is manifest that there was no present danger of an attempt to overthrow the government by force on the part of this of the admittedly small minority who shared the defendant's views. It is said that this Manifesto was more than a theory, that it was in incitement. Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it, or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration. If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.

Another of the famed Holmes-Brandeis dissents occured in 1925 in response to the Court's affirmation of the conviction of Benjamin Gitlow under the New York Criminal Anarchy Act. But the significance of this case goes far beyond their eloquent dissenting opinion. For the majority decision, while sustaining Gitlow's conviction, took a position, in justifying the Court's review of the case, that had bearing on all of the subsequent free-speech controversies heard by our highest court. The opinion declared explicitly for the first time that the prohibitions contained in the First Amendment against the abridgment of free speech by the federal government were applicable to state goverments as well, by virtue of the due-process clause of the Fourteenth Amendment.

Feiner v. People of the State of New York, 340 U.S. 315, 71 S. Ct. 303, 95 L. Ed. 295 (1961)

In March of 1949, a college student named Irving Feiner made a speech on a downtown city street in Syracuse New York. A crowd of about 75-80 people both blacks and whites, gathered to hear Feiner talk. During his speech Feiner said a number of insulting things about various politicians, local, state, and national. In Feiner's words, the Mayor of Syracuse, the Mayor of New York City and President Truman were all "bums". In his speech, Feiner also commented that "the Negroes don't have equal rights; and they should rise up in arms and fight for their rights."

When the police arrived on the scene they (the two officers) expressed some concern with the flow of traffice in the area and the general restlessness of the crowd.

As Feiner continued speaking, a number of people in the crowd became increasingly angry and even threatened Feiner. At this point, one of the police officers asked Feiner to step down and end his speech. When Feiner refused to obey the policeman after being asked to step down a second time, the policeman arrested Feiner for disturbing the peace and disorderly conduct.

Once again he lost be a 6 to 3 vote. Chief Justice Vinson delivered the majority opinion upholding the disorderly conduct conviction. He concluded, on the basis of the evidence, hat Feiner encouraged the audience to become divided into hostile camps; he interfered with traffic; and he refused the request of the police to stop his speech. Feiner, he emphasized, was not arrested for the making or the content of his speech. He was arrested because of the audience reaction to his speech. He had created a clear and present danger of riot or disturbance.

The opinion concluded with these observations:

We are well aware that the ordinary murmurings and objections of a hostile audience cannot be allowed to silence a speaker, and are also mindful of the possible danger of giving overzealous police officials complete discretion to break up otherwise lawful public meetings. "A State may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." . . . But we are not faced here with such a situation. It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of three New York courts approving the means which the police faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the state courts as to the existing situation and the imminence of greater disorder coupled with petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech.

Three Justices dissented. Justice Black's response to the majority's reasoning is that Feiner had been sentenced because of his unpopular views. The trial judge he pointed out, had fully accepted the testimony of the prosecution witnesses on all important points. In so important an issue, it is the responsiblity of the Court to review the evidence in the record and to decide for itself whether a person's rights under the First and Fourteenth Amendments have been violated. He then goes on to say:

> I think this conviction makes a mockery of the free speech guarantees fo the First and Fourteenth Amendments. The end result of the affirmance here is to approve a simple and readily available technique by which cities and states can with impunity subject all speeches, political or otherwise, on streets or elsewhere to the supervision and censorship of the local police. I have had no part or parcel in this holding which I view as a long step toward totalitarian authority.

Moreover, assuming that the "facts" did indicate a critical situation, I reject the implication of the Court's opinion that the police had no obligation to protect petitioner's constitutional right to talk. . . . Their duty was to protect petitioner's right to talk, even to the extent of arresting the man who treatened to interfere. Instead, they shirked that duty and acted only to suppress the right to speak.

In my judgement, today's holding means that as a practical matter, minority speakers can be silenced in any city. Hereafter, despite the First and Fourteenth Amendments, the policeman's club can take heavy toll of a current administration's public critics. Criticism of public officials will be too dangerous for all but the most courageous.

Justice Douglas's dissent, in which Justice Minton concurred, focuses on the role of police as censors in episodes involving unpopular speakers and hostile audiences.

Tinker v. DeMoines Independent Community School District, 393 45. 503, 89 s Ct. 733, 21 D. Ed. 2d 731 (1969)

John and Mary Beth Tinker, aged 13 and 16 respectively, attended public school in Des Moines, Iowa. In December, 1965, they and their parents attended a meeting to discuss ways of protesting the Vietnam War. The group decided to publicly wear black armbands as a symbol of their protest.

When the school principals heard about the decision at the meeting, they passed a rule that prohibited the wearing of an armband in school; those who would refuse to remove an armband would be suspended from school until it was removed. The principals stated that they hoped that his rule would prevent any disorder.

The Tinkers, aware of the new rule, wore their armbands to school. During the day no classes were disorderly and school went on as usual. Before the end of the day, however, the Tinkers went home because the school principal suspended them until they would remove the armbands. Their parents disagree with the school's rule and actions, and took the case to court. Eventually the case reached the U.S. Supreme Court.

MR. JUSTICE FORTAS delivered the opinion of the Court.

. . . the wearing of armbands in the circumstances of his own case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment . . .

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their consitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years . . . On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools . . . Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of school authorities . . .

The school officials banned and sought to punish petitioners for silent, passive, expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone . . .There is no indication that the work of the school or of any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom or on the campus, that deviates from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk . . .and our history says that it is this sort of hazardous freedom - this kind of openness - that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society.

SELECTED CONSTITUTIONAL AMENDMENTS
(From the Bill of Rights (1-10) and the 14th Amendment)

Freedom of religion, speech, press, assembly and petition	1st - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
Freedom from unreasonable searches and seizures	4th - The right of the people to be secure in ther persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.
Criminal proceedings: right to due process and a grand jury protection from self-incrimination and double jeopardy	5th - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.
Criminal proceedings: right to a trial by jury the reason for arrest, to question witnesses and to have a lawyer	6th - In all criminal prosecutions, the accused shall enjoy the ri[illegible] to a speedy and public trial, by an impartial jury of the state and district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses in favor; and to have the assistance of counsel for his defence.
Reasonable bail and punishment	8th - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.
States' authority--reserved powers	10th - The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
States must provide due process and equal protection	14th - Section 1 - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

OBJECTIVES:

1. Students should be able to describe who has jurisdiction over disputes they have at home or school.
2. Students should be able to identify and describe the various state and federal courts, as well as the responsibilities and personnel of each.
3. Students should be able to describe which courts and levels of government have jurisdiction over particular legal disputes.
4. Students should be able to explain the concept of "appeals" as it is used in our court system and its purposes.

INFORMATION FOR TEACHERS:

The three basic types of courts are appellote and trial units. (The difference is one of jurisdiction.)

> The persons about whom and the subject matters about which court has the right and power to make decisions tht are legally binding.

Apellate Jurisdiction - power to hear arguments that claim a lower court made mistakes in handling a particular case.

Original Jurisdiction - power to hear the case for the 1st time

Trial Courts - can be further categorized as courts of
  a. general jurisdiction - handle major criminal and/or civil cases
  b. special jurisdiction - specific matters, ex. Family Court, Surrogate Court
  c. limited or petty jursidiction - cases of lesser importance, civil and criminal and traffic violations, the breaking of local government ordinances and minor civil hearings.

Another specific division within these general categories is that of geographic jurisdiction - Federal, State, and municipal court systems.

VOCABULARY:

appellate jursidiction
Family Court
Federal Courts
jurisdiction
limited jurisdiction
Municipal Courts
original jurisdiction
Small Claims Court
special jurisdiction
State Courts
Surrogate Court
Trial Courts

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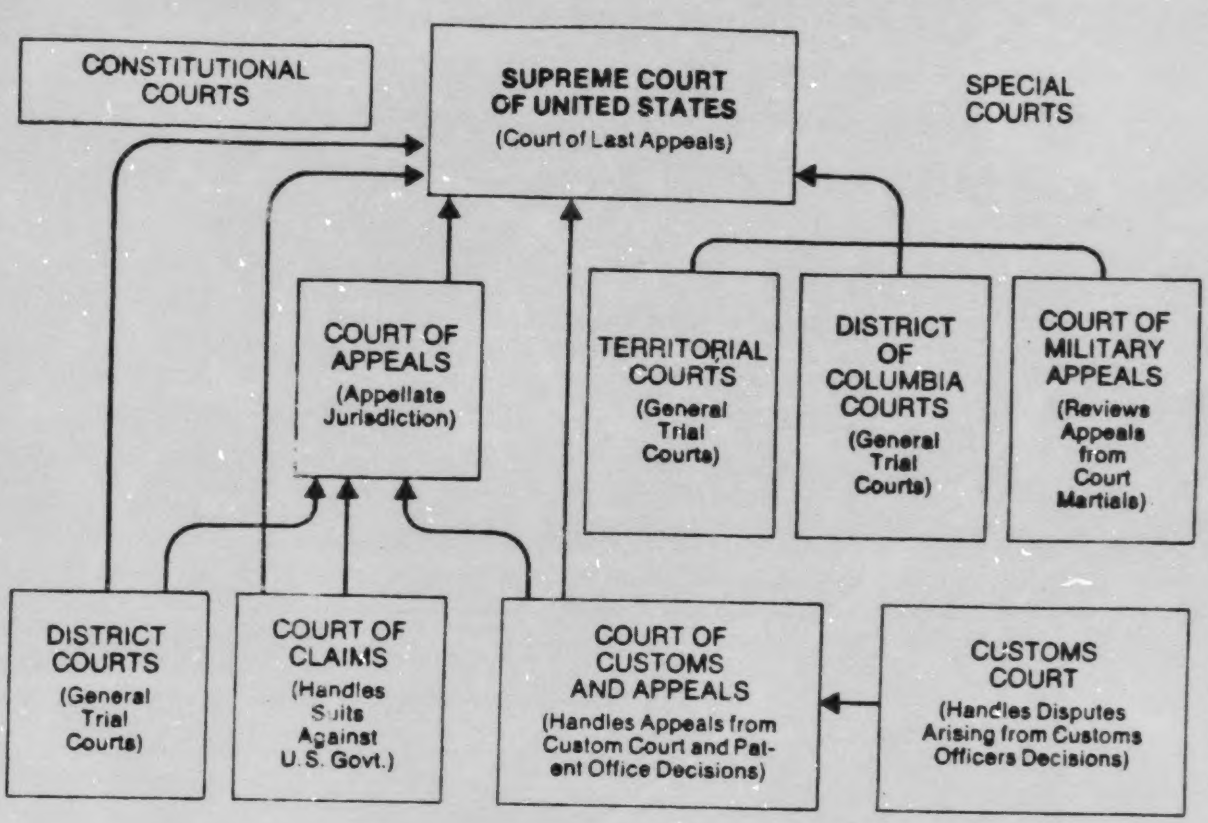
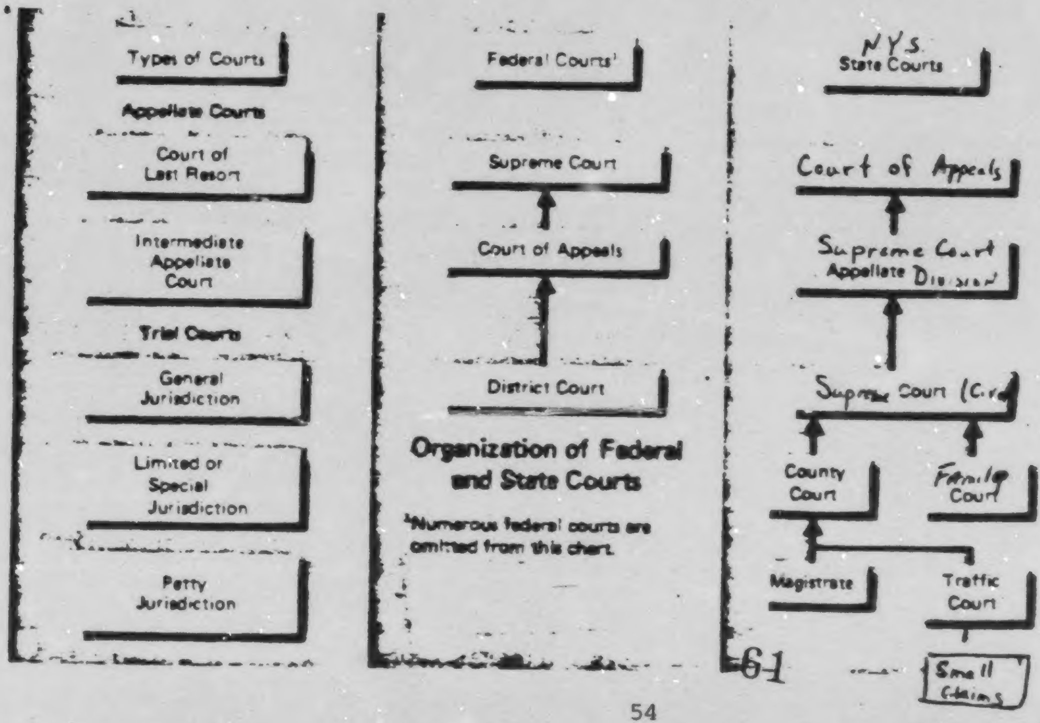
NATIONAL COURT SYSTEM


CONSTITUTIONAL COURTS
SUPREME COURT OF UNITED STATES
(Court of Last Appeals)
SPECIAL COURTS
COURT OF APPEALS
(Appellate Jurisdiction)
TERRITORIAL COURTS
(General Trial Courts)
DISTRICT OF COLUMBIA COURTS
(General Trial Courts)
COURT OF MILITARY APPEALS
(Reviews Appeals from Court Martials)
DISTRICT COURTS
(General Trial Courts)
COURT OF CLAIMS
(Handles Suits Against U.S. Govt.)
COURT OF CUSTOMS AND APPEALS
(Handles Appeals from Custom Court and Patent Office Decisions)
CUSTOMS COURT
(Handles Disputes Arising from Customs Officers Decisions)



Organization of Federal and State Courts

¹Numerous federal courts are omitted from this chart.

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ACTIVITY A: Who Has Jurisdiction?

Procedure:

Using the following cases or some created by teachers and/or students, have students decide whether it would be tried in a federal or state court, and to what court would it be appealed.

NOTE: Some basic reading or class work on the the topic will be necessary.

1. One state is sueing a neighboring state for polluting the air and causing of damage due to acid rain.
2. Parents are seeking custody of their child - a divorce case.
3. A man kills an F.B.I. agent.
4. A homeowner sues a building contractor for breach of contract.
5. Two persons are apprehended smuggling marijuana in their van across state lines.

Key:

1. Federal
2. State
3. Federal
4. State
5. Federal

ACTIVITY B: Criminal or Civil?

Procedure:

Using the following hypothetical cases or others created by students or teacher, have student identify whether it would be considered a criminal or civil case. Have students give reasons for their choices.

1. a divorce action
2. a damage claim due to a traffic accident
3. shoplifting
4. a dispute of neighbors over property boundries
5. D.W.I.
6. income tax evasion

Key:

1. civil
2. civil
3. criminal
4. civil
5. criminal
6. criminal

ACTIVITY C: Which Court?

Procedure:

Given the charts on the court system, have students speculate in which courts the following cases would be tried. Have students discuss their reasons; disagreements among students should lead to comparisons of reasoning. The correct answers should then be given and discussed.

1. Bill, fifteen year old student at the local high school, is caught giving marijuana to a fellow student. (Family Court - special jurisdiction)
2. A wealthy man dies and in his will he leaves most of his estate to charities. His two children feel they are entitled to more of his estate. (Surrogate or Probate Court - special jurisdiction)
3. George is accused of arson in a recent fire in his clothing store. (County Court/Criminal Trial Court - general jurisdiction)
4. Mary rented an apartment from Jim. She is moving and tries to get her security deposit back. Jim refuses claiming she has done considerable damage to his property. (Small Claims Court/Town Justice Court - limited jursidiction)
5. Doris was injured while riding to work with Sue. She missed several days of work and has many medical bills. She is sueing Sue for damages. (State Supreme Court/Civil Trial Court - general jurisdiction)
6. Morris is arrested after attempting to hijack a airplane flying from Los Angeles to Miami. (U.S. District Court - general jurisdiction)
7. Sam is ticketed for driving 40 mph in a 25 mph zone in the City of Cortland. (City Court/municipal court - limited jurisdiction)
8. Mary is ticketed for violation of the Cortlandville dog ordinance after she allowed her collie to run loose in her neighborhood. (Town Court/municipal court - limited jurisdiction)

ACTIVITY C: Student Worksheet

1. Bill, fifteen year old student at the local high school is caught giving marijuana to a fellow student.
2. A wealthy man dies and in his will he leaves most of his estate to charities. His two children feel they are entitled to more of his estate.
3. George is accused of arson in a recent fire in his clothing store.
4. Mary rented an apartment from Jim. She is moving and tries to get her security deposit back. Jim refuses claiming she has done considerable damage to his property.
5. Doris was injured while riding to work with Sue. She missed several days of work and has many medical bills. She is sueing Sue for damages.
6. Morris is arrested after attempting to hijack a airplane flying from Los Angeles to Miami.
7. Sam is ticketed for driving 40 mph in a 25 mph zone in the city of Cortland.
8. Mary is ticketed for violation of the Cortlandville dog ordinance after she allowed her collie to run loose in her neighborhood.

ACTIVITY D: Guest Speakers

Procedure:

Guest Speakers - inviting guest speakers: an officer of the local police department, judges of local courts or trial attorneys can be both a beneficial and motivating activity.

Preparation:

1. Personally discuss your objectives with the guest speakers well in advance of his/her visit. If your guest speaker seems at all hesitant it might be better to find another person.
2. Have students prepare questions on the topic which your speaker will be presenting. Type these and give them to your guest again in advance of his/her visit.
3. Make the presentation as informal as possible to make both the guest and students at ease. Allow a time for questions and discussions with the speaker. A circle arrangement of desks is very good for creating an informal atmosphere.
4. Always set aside time, usually the next day, to debrief what happened in your guests' presentations. If there are still areas that were not discussed or questions that were not answered, create alternate activities to meet your goals. Always thank your guest speakers personally and with a letter, they are a valuable classroom resource.

ACTIVITY E: A Field Trip

Procedure:

Visit the court house to meet the court clerk and judge and discuss the possibilities of the students in your class visiting the court house. Plan with the clerk or judge which day would be best for the visit, noting in particular what cases are on the docket. Try also to find a time when the class could talk with the judge.

Once those arrangements have been made, tell the class about the visit and ask them to discuss with friends and parents the kinds of questions they would like to explore during and after the visit. Collect and discuss the students' questions before the visit, asking the class which of those questions are most important and why (they may rate the questions using a 1-5 point scale). Then, visit the court house. You may wish to invite parents to accompany the class. (The trip should be informative to them and may create parental enthusiasm for your law-focused education efforts). Have students observe seeking answers to their questions. Also have them develo more questions. Following observation, discuss the questions and what was observed with the judge.

ACTIVITY E: Worksheet for Court Visit

What kind of cases does this court hear?

How does a person become a judge in this court?

What kind of jobs do the people in this courtroom do?

Attorneys

Clerk

Bailiff

Court Stenographer

Others

Does this court have a jury? Why or why not?

Describe what you saw happen in court today?

List any qeustions that occur to you as you watch the court proceedings.

ACTIVITY F: Fill in the chart

Procedure:

The charts on the court structure which accompanies this topic may be used in various ways by duplicating them blank or partially completed and having students fill in the missing information.

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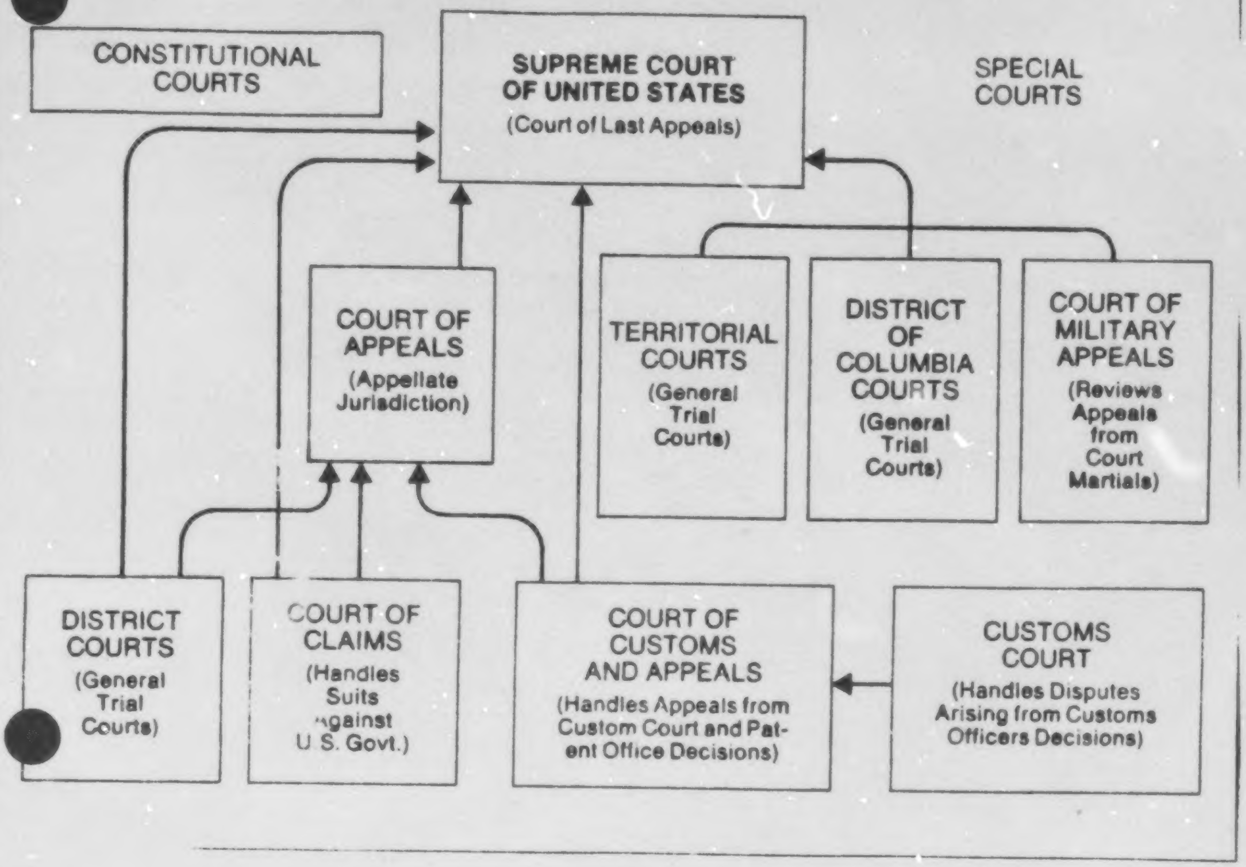
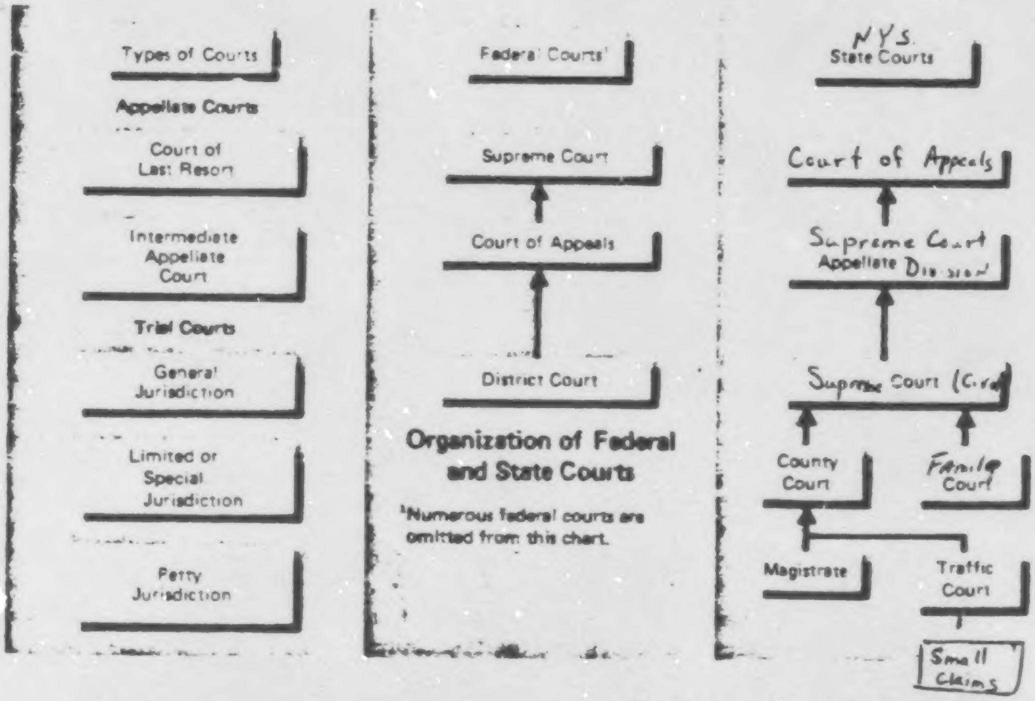
NATIONAL COURT SYSTEM


CONSTITUTIONAL COURTS
SUPREME COURT OF UNITED STATES
(Court of Last Appeals)
SPECIAL COURTS
COURT OF APPEALS
(Appellate Jurisdiction)
TERRITORIAL COURTS
(General Trial Courts)
DISTRICT OF COLUMBIA COURTS
(General Trial Courts)
COURT OF MILITARY APPEALS
(Reviews Appeals from Court Martials)
DISTRICT COURTS
(General Trial Courts)
COURT OF CLAIMS
(Handles Suits against U.S. Govt.)
COURT OF CUSTOMS AND APPEALS
(Handles Appeals from Custom Court and Patent Office Decisions)
CUSTOMS COURT
(Handles Disputes Arising from Customs Officers Decisions)



Organization of Federal and State Courts

¹Numerous federal courts are omitted from this chart.

ACTIVITY G: Jurisdiction: What is it and who has it?

Procedure:

Define "jurisdiction".

1. Place on the chalkboard examples of some of the cases that are brought to trial in federal courts. Examples: Lawsuits between citizens of different states, persons accused of breaking laws passed by Congress, crimes committed on American ships at sea, etc.

2. A student has a babysitter or relative in the home. Does the student have to obey the rules of persons other than the parents.

3. Place on the chalkboard examples of some cases that are brought to trial in state courts. (Municipal, magistrate, circuit, court of appeals, etc.) Have the students discuss who has jurisdiction over them. Then discuss what would happen if court jurisdiction over cases was not clearly defined.

ACTIVITY H: Priorities: Juvenile Justice vs. Adult Justice

Here are two situations:

1. Billy T. was probably the person who set fire to three buildings. Billy is eleven years of age and is about to have his first experience with the juvenile justice system.
2. William U. was probably the person who set fire to three buildings. Mr. U. is twenty-two years of age and has no criminal record.

Consider each situation separately, determining which principles below should have the highest priorities.

( ) ( ) ( ) ( ) ( ) ( )

A. To protect society against crime/damanges to life and property.

B. To rehabilitate individuals who commit anti-social acts.

C. To insure that decisions about a person's guilt are reached in a fair, just manner.

D. To provide the accused assistance with their defense.

E. To punish criminals.

[illegible]. To operate the court system at the least possible cost to the taxpayer.

After each situation is considered, compare the priorities in each case to determine whether students consider the priorities to be different for a child than an adult. Challenge students to state why their priorities differ in each case.

Students could use this strategy with parents, lawyers, and juvenile officers, and children of different ages and consider whether their thinking differs from that of people of different ages and with different amounts of knowledge about our court system.

Types of Cases

OBJECTIVES:

1. Students should be able to describe a complex dispute between two parties and suggest procedures to resolve the dispute in a manner fair to all parties.
2. Students should be able to distinguish civil from criminal cases.
3. Students should be able to assume the roles of judge, attorneys, jury, witnesses, defendant, and others in a mock trial held in the classroom.
4. Students should be able to list and compare basic assumptions and procedures used in civil and criminal cases.
5. Students should be able to explain how, in theory, the adversery system should result in just decisions, as well as how, in practice, certain conditions prevent it from achieving the ideal of justice.

INFORMATION FOR TEACHERS:

ORGANIZATION

Criminal Case

Degree: Felony
Misdemeanor
Violation
Types: Preliminary Crimes
Crimes against a person
Crimes against property
Crimes against society's Public Health Safety & Welfare
Crimes against society's Public Decency and

Civil Case

Degree: Am't damages if any determined on each individual case
Types: Breach of Contract
Torts:
Intentional
Negligence
Defamation of Character
Trespass

Important Words and Definitions:

Adversary System - system used in the US for providing a systematic and reasonable way to solve social conflicts. Each side presents argument in its favor to an impartial judge or jury.

Criminal Case - an action against a person who has been accused of violating the government's penal laws.

Civil Case - a lawsuit brought by one person against another - to enforce a right or gain payment for a wrong, rather than a court action involving the government trying to punish a crime.

Felony - a serious crime with a minimum sentence of one year or more

Misdemeanor - a criminal offense less than a felony that is usally punishable by a fine or less than an year in jail.

Violation - the breaking of a traffic law, a municipal code or ordinance which is punishable by a fine, forfeiture, or other penalty. This is not considered a crime.

Types of Cases

Preliminary Laws -

Solicitation - asking for, enticing, strongly requesting - urging someone to commit a crime

Attempt - an effort to commit a crime that goes beyond preparation, and who would have succeeded if it had not been prevented

Conspiracy - an agreement between two or moe persons to commit a crime. (in most states and in federal law an "overt act" is necessary)

Crimes Against the Person:

I. Homicide - killing of one human being by another
    A. Non-criminal homicide - killing justifiable or excusable and the killer is deemed faultless
    B. Criminal homicide - killing that is deliberate and done with malice
        1st degree - premeditated
        2nd degree - done with malice, but without premeditation
        Felony Murder - takes place during commission of certain felonies - arson rape, robbery, burglary
        Voluntary Manslaughter - intentional killing committed under circumstances that mitigate, but not justify or excuse the killing
        Involuntary Manslaughter - unintentional killing that results from conduct that is so reckless that it involves extreme danger of death or bodily injury.
    C. Negligent Homicide - causing death through criminal negligence - ex. auto accident

II. Assault and Battery
    A. Assault - an intentional show of force or a movement that could reasonably make the person approached feel in danger of physical attack and harmful physical contact.
    B. Battery - any unlawful, unconsented to physical contact by one person upon another. Actual injury is not necessary.

III. Rape
    A. Forceable - unlawful sexual intercourse committed by a man with a woman without her consent
    B. Statuatory Rape - sexual intercourse committed by a male or a female who has not yet reached the age of consent
    C. Sexual Assault - modification to make the law applicable to both men and women

Crimes Against Property

1. Arson - willful and malicious burning of another person's property
2. Vandalism - (malicious mischief) - willful distruction of or causing of damage to the property of another
3. Larceny - unlawful taking and carrying away of property of another with intent to steal it.
    a. Grand - above $100 - felony
    b. Petty - less than $100 - misdemeanor
4. Embezzlement - unlawful taking of property by someone to whom it was entrusted
5. Robbery - unlawful taking of property from a person's immediate possession by force or intimidation
6. Extortion - (blackmail) use of threats to obtain property of another

7. Burglary - unauthorized entry into any structure with the intent to commit a crime, regardless of time of day
8. Forgery - alters a writing or document with intent to defraud
9. Receiving Stolen Property - receives or buys property that he or she knows or has reason to believe is stolen
10. Unauthorized Use of a Motor Vehicle - taking, operating, or removing a motor vehicle without consent of the owner.

Crimes Against Society, the Public Health & Safety and Welfare:

Ex. Transporting a loaded gun in a motor vehicle, violating laws regulating food, drugs, liquor, cosmetics, disobeying fish and game laws, etc.

Crime Against Society's Public Decency and Morals:

1. Suicide - deliberate taking one's life. Penalties now against unsuccessful attempts and aiding in a successful suicide

2. Euthanasia - 'mercy killing" act or method of putting to death persons who are terminally ill, may be prosecuted as a homicide

3. Prostitution - the offering of the body for sexual purposes in exchange for money

4. Illegal Gambling - betting and other games of choice that are unregulated by the Government and are illegal

5. Disorderly Conduct - actions that disturb the peace or shock public morality

6. Pornography - the publication and/or sale of obscene literature or art; varies from state to state and locality to locality

7. Contributing to the Delinquency of a Minor - a variety of offenses integrated to be contrary to what is good and moral behavior for youth. i.e. selling alcohol to minors.

8. Contract - a promise between two or more parties that creates an obligation the law will enforce.

9. Breach of Contract - is the non-performance in part or whole of a contractural obligation.

10. Tort - is a civil or private wrong, an injury outside of a contract resulting from a breach of legal duty.

11. Intentional Tort - an act that one intends to do which may forceably cause injury to another - Ex. assault, battery, defamation of character, libel and slander

12. Unintentional Tort (Negligence) - is the failure to exercise the degree of care a reasonable person of ordinary prudence would display in the same circumstances.

13. Lawsuit - a civil action, a court proceeding to enforce a right between persons

14. Plaintiff - a person who brings a lawsuit against another person

15. Defendent - a person against whom a legal action is brought

16. Complaint - main paper filed in a civil lawsuit, a statement of the wrong or harm being done.

±7. Statue of Limitations - the time limit within which a lawsuite must commence

I. THE ADVERSARY SYSTEM

A. This is the "system" we use in the United States for providing a systematic and reasoned way to solve social conflicts. Each side to a conflict presents the arguments in its favor to an impartial judge and/or jury who settles the conflict.

B. Initiation of a suit in the system

1. In the civil cases, an injured individual must bring a suit to initiate the suit in most cases

    a. Just because someone files a suit does not mean he has good case.
    b. A person with a frivolous case may have trouble getting a lawyer.
    c. Why get a lawyer at all?
        (1) In the quest for uniformity and fairness, very complex procedures for filing, presenting and appealing suits have developed.
        (2) Lawyers are skilled in collecting facts and presenting them in the best light, i.e. in a way that will persuade the fact finder.
    d. Sometimes the government will bring suit for an injured person. For example:
        (1) anti-trust suit
        (2) civil rights cases

2. In criminal cases a complaint by an individual, information by the prosecutor or indictment by a grand jury initiates the system.

C. Burdens on litigant to overcome opponent

1. Burden of Proof

    Filing suit is not enough. Like a debate, one must bring in convincing facts to prove what one alleges. One must bring in "enough" evidence so that reasonable men can find in his favor. This has to do with the quantity of evidence.

2. Burden of persuasion. This has to do with the quality of the evidence.

3. How does the jury decide who has fulfilled the burden?

    a. Civil Cases - "by rpeponderance of evidence"
    b. Criminal Cases - "beyond a reasonable doubt"
    c. Unanimous verdict necessary for criminal cases. Majority for civil cases

D. The role of the jury

1. To decide the facts, (i.e. what the truth is)
2. To apply to the given situation the law as outlined by the judge in the instructions to the jury. Missouri now has uniform instructions in both criminal and civil cases to help insure uniformity of result.
3. In Missouri and a few other states, the jury sets the sentence in criminal cases.

E. What are the weaknesses of the system?

1. Judge's bias

   a. They try not to be, but some are.
   b. There are safeguards, e.g. change of venue.

2. Jury Bias

   a. Voir dire weeds most out. What kinds of questions would accomplish this?
   b. Lawyers take into account possible biases in the way they present the facts. However, this is not to say that they would attempt to fool the jury or misrepresent facts.

3. Court congestion

   a. rising crime rates
   b. Delay is sometimes caused by lawyers using all of the procedures to the advantage of his client. This is often necessary to prepare a case that presents the client's position to the best light.
   c. What is judicial economy? Lawyers and jurists would rather have a slow and just process than a speedy unjust one.

4. Spasmodic development of law.

   a. Courts can only decide the cases brought before them. They cannot seek out inequities in society and right them on their own.
   b. The legislature is the place where changes of law should be made to deal with problems that are "likely to come up".
   c. It took many years before a someone appealed to the Supreme Court because he wasn't provided with an attorney to represent him in a felony prosecution.

5. Accessibility to the courts.

   a. Some say courts are not accessible to everyone.
   b. With legal aid for the indigent those who are poor can get help.
   c. There is a movement in the insurance industry toward legal insurance not unlike Blue Cross medical insurance.
   d. Some unions are attempting to get legal insurance as a fringe benefit.
   e. All these attempts to overcome the problem have the general approval of lawyers with the caveat that no restriction be made on WHO the individual selects as his lawyer. The basis of the caveat is the personal nature of the attorney-client relationship.

II. THE DIFFERENCE BETWEEN THE CRIMINAL LAW AND CIVIL LAW

A. Criminal law

1. Crimes are defined in statutory law for the most part.

   a. We first define what is a criminal act.
   b. Must be specific enough so that a person will understand that if he does a certain act, he is committing a crime.
   c. Must balance a person's constitutional rights against the welfare of society to see if the statute is constitutional.

2. Enforcement

   a. Investigation and apprehension is carried out by police, FBI, etc.
   b. NOT a judicial function. The judicial branch is an arbiter not law enforcement organization.
   c. These organizations must balance public's interest in apprehension vs. individual's rights not to be wrongfully detained, falsely changed, etc.

3. Prosecution

   a. Prosecuting attorney directs prosecution.
   b. Presents the states case at arraignment and at hearings for the setting of bail.
   c. Preliminary hearing.
   d. Possible plea negotiation
      (1) Prosecutor and defense lawyer separately weigh their evidence and predict what is likely to happen if the case goes to a jury.
      (2) Then each try to negotiate toward a position that would be at least as good as they predict would result if they went to the jury.
   d. Trial
   e. Appeal

4. Sentencing

   a. Should the jury do the sentencing?
   b. Should the judge?
   c. In Missouri, as in only a few other jurisdictions, sentencing is done by juries.
      (1) Where there is a guilty plea or if the jury can't agree, then the judge will set the sentence.
      (2) If the judge sets the sentence, he may hold a pre-sentence hearing to find out more about the convicted person's past, etc.

5. Post-conviction remedies. These are legal pleadings which may follow conviction and all appeals.

B. Civil Law

1. It may involve disputes concerning:

    a. contracts
    b. negligence
    c. intentional torts
    d. products liability
    e. property

2. Procedure

    a. Preparation before filing suit
        (1) examination of client
        (2) investigation
    b. Filing the suit
        (1) selection of venue
        (2) selection of the parties
        (3) allegations of the petition
        (4) answer
    c. Motions
    d. Discovery
        (1) depositions
        (2) interrogatories
        (3) production of documents
        (4) admissions
        (5) physical and mental examination
        (6) enforcement of discovery
    e. Preparation for trial
        (1) trial brief
        (2) review of elements of case with client
        (3) review of testimony with witnesses
        (4) subpoena witnesses
    f. Trial
        (1) selection of jury
        (2) openings statements
        (3) evidence
            (a) examination
            (b) cross-examination
        (4) closing argument
        (5) jury verdict

For further information on criminal law, you might use the following sources:

1. Street Law: A Course In Practical Law, 2nd edition, Mineola, NY, West Publishing Company, pp. 36-58.
2. Decisions - Student Casebook in Criminal Law, St. Paul, Minnesota: Paul S. Amidon & Associates, Inc.

For further information on civil law, you might use the following sources:

1. Freedom, New York State Law Day Materials, 1984, New York State Department of Education
   (For your convenience a section of this publication entitled "Civil Law - Overview/Outline" has been reproduced in the Appendix of this section.)
2. Decisions - A Student Casebook on Civil Law, St. Paul, Minnesota, Paul S. Amidon & Associates, Inc.

VOCABULARY:

adversary system
assault and battery
burden of proof
civil case
complaint
content
criminal case
damages
defamation of character
defendent
felony
forgery
homicide
larceny
lawsuit
manslaughter
misdemeanor
plaintiff
pornography
rape
statue of limitations
theft
tort
vandalism
violation

ACTIVITY A: Identify the Law

Procedure:

Duplicate the following story. Have students read the story identifying as many laws that are involved in the story as possible. Once the laws are identified, the students should also label which are criminal laws and which are civil. This activity could easily be adapted to group work and made into a competition between groups.

> Jack and Jill leave school between periods and decide to have a good time. They go Jill's house and borrow her sister's car without telling her and drive to a local shopping center. Jill urges Jack to hurry and he drives 65 mph down the expressway. Jack parks the car in a space marked 10 minute parking. They enter a local store and purchase a walkman cassette player. From there they walk over to McDonald's and buy lunch. They walk around the shopping center eating their lunch and throwing their trash wherever they please. They turn on the cassette player and find that the earphones do not work. They go back to the store and exchange it for a working set. Jill feels that the store is a rip off so quietly slips two of the latest rock tapes in her pocket on the way out.
>
> The get in the car and discover that there is a huge scratch on the side of the car obviously made by a car that had parked next to them. After further investigation, they see that the car's tape deck has been stolen.
>
> Quickly, they call the police to report the accident and theft. As the police are investingating, they find a small clear bag of illegal drugs under the front seat. Jack and Jill are arrested.
>
> (Adapted from Street Law, 2nd edition)

Answer Key:

1. truancy - civil
2. unauthorized use of a motor vehicle - criminal
3. traffic violation - criminal
4. parking violation - criminal
5. food sales permit - criminal
6. littering - criminal
7. warranty law - civil
8. shoplifting - criminal
9. tort or negligence - civil
10. breaking and entering - criminal
11. larceny/theft - criminal
12. search and seizure - criminal
13. possession of illegal substances - criminal
14. arrest - criminal

ACTIVITY A: Student Handout

Jack and Jill leave school between periods and decide to have a good time. They go Jill's house and borrow her sister's car without telling her and drive to a local shopping center. Jill urges Jack to hurry and he drives 65 mph down the expressway. Jack parks the car in a space marked 10 minute parking. They enter a local store and purchase a walkman cassette player. From there they walk over to McDonald's and buy lunch. They walk around the shopping center eating their lunch and throwing their trash wherever they please. They turn on the cassette player and find that the earphones do not work. They go back to the store and exchange it for a working set. Jill feels that the store is a rip off so quietly slips two of the latest rock tapes in her pocket on the way out.

The get in the car and discover that there is a huge scratch on the side of the car obviously made by a car that had parked next to them. After further investigation, they see that the car's tape deck has been stolen.

Quickly, they call the police to report the accident and theft. As the police are investingating, they find a small clear bag of illegal drugs under the front seat. Jack and Jill are arrested.

(Adapted from Street Law, 2nd edition)

ACTIVITY B: Is it legal?

Procedure:

Duplicate the following list of acts and have students read. The activity provides an opportunity to examine the underline between legal behavior and a criminal act. Students can be divided into small groups and asked to rank each act. The students should rank them from most serious to least serious. Once this is done, the groups should identify which acts should be felonies, misdemeanors, violations, and not a crime. Each group should be prepared to justify their rankings. After each groups ranking is discussed, the class might wish to make a consensus ranking.

NOTE: Other acts may be developed by teachers and/or students to add to or substitute for those listed below.

1. Beth parks her car in a "For Handicapped Only" space because she doesn't want to walk far to the store.
2. Bill is an addict and gives drugs to the young kids on the neighborhood playground.
3. Gloria is an actress who works in X-rated films.
4. Vince sees a good friend shoplifting and does not turn him in.
5. Barb and Mary are homosexuals who live together as if they were married
6. Jim is caught with four ounces of marijuana.
7. Ted robs a liquor store at gunpoint.
8. Henry refuses to pay his income tax because he objects to government policies.
9. Jan gets drunk and hits a child while driving her car.
10. Jack robs a store at gunpoint.
11. Joe gets in a fight and hits Sam; Sam later dies from head injuries.
12. Ed refuses to wear his seat belt while driving.

(Adapted from Street Law)

ACTIVITY B: Student Handout

1. Beth parks her car in a "For Handicapped Only" space because she doesn't want to walk far to the store.
2. Bill is an addict and gives drugs to the young kids on the neighborhood playground.
3. Gloria is an actress who works in X-rated films.
4. Vince sees a good friend shoplifting and does not turn him in.
5. Barb and Mary are homosexuals who live together as if they were married.
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9. Jan gets drunk and hits a child while driving her car.
10. Jack robs a store at gunpoint.
11. Joe gets in a fight and hits Sam; Sam later dies from head injuries.
12. Ed refuses to wear his seat belt while driving.

(Adapted from Street Law)

ACTIVITY C: One on One Civil Law Court Cases (Adapted from Project PATCH)

Procedure:

The following exercise takes students quickly through the process of deciding a civil case. The actual directions and objectives are reproduced in the Appendix of this section along with example rating sheets.

Three students are selected: one as judge, one as attorney for the plaintiff, and an attorney for the defendant. Each is given the fact sheet on the case. The attorneys are given 10 minutes to prepare their case. They may use other students from the class as witnesses. No physical evidence is allowed. Each attorney must argue the facts of the case. The judge rates the performance of each attorney and makes a determination. Students also may participate by rating the performance made. The case should be debriefed and the cases discussed by entire class.

Plaintiff, Miss Nelson, is suing the Defendant, Mr. High, for damages due to the Defendant's negligence.

PLANTIFF: MISS NELSON

I was eating lunch in Mr. High's restaurant. For dessert, I had a piece of blueberry pie. I took a bite of the pie and when I swallowed, I felt a sharp pain in my throat. To make a long story short, I had swallowed a tack, which necessitated an operation for removal. I claim that it was due to Mr. High's negligence in allowing the tack to be baked in the pie, which, incidentally, was baked in his very own kitchen.

DEFENDANT: MR. HIGH

I admit that the type of tack that Miss Nelson swallowed is just like the one used in making the boxes the blueberries come in. I've been in business for 18 years and this is the first time I have ever seen a tack in the blueberries. I use every care possible in the preparaton of the food in my kitchen. I couldn't say how the tack got into the blueberries, nor do I see how anyone else can. Therefore, I don't see how I can be held responsible.

THE VERDICTS

SAMPLE CASE A:

The Supreme Judicial Court of Massachusetts held that it is a well-settled fact that it is the duty of a restaurant to use due care to furnish wholesome food fit to eat, but, there is nothing in the record to show that the injury to Miss Nelson resulted from any failure of duty on the part of Mr. High. The precise cause of the injury was left to conjecture.

DECISION FOR DEFENDANT

NOTE: Four cases of fifty have been duplicated for this activity in the appendix. Further cases can be obtain from *New York State Law Day Materials: Freedom* - prepared by the Law, Youth, and Citizenship Program of the NYS Bar Association and the NYS Education Department, 1984. This should be available in every school district.

SUMMARY
ONE ON ONE CIVIL LAW MOOT COURT CONTEST RULES AND REGULATIONS

1. Encourage every student to take part.*
2. Discuss activity directions.
3. Pull cases fairly and start cases on time.
4. Use the students in the class as your witness pool.
5. Use witness only once. Use case only once.
6. Student attorneys should be encouraged to use notes, text, and their witness's knowledge in preparation for a case.
7. Give student attorneys approximately ten (10) minutes to prepare for their case.
8. Every trial has an opening statement, direct examination of plaintiff and defense witnesses, cross-examination of plaintiff and defense witnesses, and closing statement.
9. Do not allow re-direct or re-cross examinations.
10. No physical evidence should be used in the case presentation.
11. Witness should not be allowed to use notes on the witness stand.
12. Attorneys should use notes, when needed, sparingly during the trial.
13. Stock to the facts and legal issue in the case.
14. Formally state all proper objections.
15. Judges are the final arbitrators of facts, law, motions, and all objections.
16. Judges award the case based on a holistic rating of a student's knowledge of the law and his/her presentation skills.
17. Debrief all cases with students. (Individualize your instructions.)
18. Defuse winning and have fun learning with these live civil law case studies.

To improve student involvement in the ONE ON ONES, you may wish to have:

1. Students in the audience rate each case or keep a case study log.
2. Students establish a dress code for court appearances.
3. Awards
4. One student in charge of keeping records.
5. Inter-class competition.
6. Students taking turns as bailiff.
7. Students in charge of pulling cases and timing the preparation and presentations.

* Student ownership, management, and administration of the ONE ON ONES is important as it helps institutionalize the process and offers real opportunities for students' of responsibility.

JUSTIFICATION FOR ALLOWING
ONLY TEN (10) MINUTES
PREPARATION TIME

We have found that by allowing only ten (10) minutes to prepare for the case, it:

- Lessens the competitive nature of the Mock Trial experience;
- Measure truly what the student (working with only one other student) can quickly recall from a Civil Law instructional unit;
- Makes the ONE ON ONE's a true Mock Trial and not a homework assignment;
- Improves note-taking; and
- Underscores the value and use of legal references.

1. PICKING A CASE: The student lawyers will flip a coin eleven (11) minutes prior to their case. The winner o the toss will select whether he/she wishes to be the plaintiff's attorney or the defendant's attorney in the case. After that selection has been made, the case will be drawn sight unseen by the opposing student attorney. Each attorney will be given a copy of the fact card for the first time.

2. PICKING WITNESSES: The fact cards depict male and female roles for witness Should this present a problem, both attorneys should agree to the sex of the witnesses to be used in the case presentation. If the attorneys cannot agree, then regardless of whether it is a male or female, the person who is selected as the witness through the luck of the draw must play the role the fact card indicates as the witness.

3. TIME FOR PREP: The two persons team for both defense and plaintiff will be given eight (8) to ten (10) minutes to prepare their case.

4. PREP TIME EXTENSION: Both teams will be given a quiet area to prepare for their case presentation. Should the court case that is being presented while these attorneys are preparing extend past its scheduled time, both teams will be allowed to continue their preparation until the completion of the preceding trial.

5. OVERNIGHT CASES: If a backup takes place and both preparing student attorneys agree, a case may be kept overnight. That same overnight case will be argued as the first case the next school day.

   Teachers will determine whether adequate time remains. Once both attorneys agree on an overnight case, their decision is final. One or both student attorneys may not change their minds later that day or the next school day.

6. FACT CASE CARDS: Should be prepared in triplicate and contain the facts both sides must present during the trial. Both lawyers are given a copy. The judge also receives a copy. These statements of fact must be maintained but certainly the lawyers should seek to creatively expose these facts through their presentations.

No physical evidence will be accepted by the court during the tiral. Only the testimony of the attorney's one witness is acceptable.

If one lawyer feels strongly that his/her opponents are abusive in their interpretation of the statement of fact, he/she can request from the judge a bench conference. The judge will offer instructions on clarity of the statement of fact.

If the judge determines that one or both student attorneys or witnesses have lost sight of the legal issue and facts of the case and one or both parties refuse to apply themselves to the statement of fact, the judge will in his/her rating of one or both attorneys or witnesses reflect that dissatisfaction.

7. JUDGING: One person or a panel of judges may sit the bench during a case. The judge(s) are the final arbitrators of both the facts and the law in these cases. Judge(s) in mock trial contests can come from anywhere. Use your whole school community as a resource. Classroom instructors, other teachers, parents, school administrators, central office personnel, students from grades 4-12, and senior citizens may all be effectively used.

For classroom and grand finals, call on the legal community to judge. Law students, attorneys, police, criminal justice agents, and judges, given enough advanced notice, may also be willing to participate.

When possible, use a panel of judges. Odd numbers of one (1) or three (3) or five (5) member team judging panel seem to work best. When possible, classroom instructors should try to get others to judge. The teacher's role as a debriefing agent for team members is best accomplished as an observer, not as a judge.

8. RATING: The rating sheet has built into it an equity section, entitled, "Difficulty of Case". Case selection for the contest is based on a cross-section of civil law issues and uses real cases that try to offer a balance of legal alternatives for both plaintiff and defendant.

If the judge feels that one person seems to have the more difficulty legal position, they may rate the more difficult position higher before the case is over presented.

This handicapping will build equity into the competition. (Judges may wish to refer to the real verdict in the case to help with the consideration of equity.)

Judges will use the rating sheet as a guideline but are not confined to the sheet alone. However, it is recommended that the judge's decision in the case be based on the categories listed on the rating sheet.. See sample in Appendix. Rating is not based strictly on the law or a student attorney's knowledge and understanding of the law. The student attorney is rated on the full scope of presentation. It is a subjective approach with built-in guidelines that examines all the educational benefits the activity was designed to encompass.

9. TIES: In case of ties (and they will occur), how do you break the tie? After every effort has been exhausted by the Bench to break the tie, you may wish use one of the following methods:

   a. Award the case to the attorney whom you have rated as having the more difficult legal case to argue (if in fact you rated one over the other).

   b. Award the case to the attorney who selected the winning side in the real case. (See Verdict Book)

   c. Flip a coin.

10. A POINT ON CREATIVITY: Student attorneys should identify the legal issue in the case and present it to the best of their ability. Do not camouflage or distort the law, the legal issues, or the facts; that would be an abuse of "creativity".

11.

TRIAL PROCEDURE	RECOMMENDED MINUTES
Preparation	8 - 10
Plaintiff Attorney's Opening Statement (Legal Reason Action is Taken and Remedy Sought)	1
Defense Attorney's Opening Statement (Optional, Strongly Recommended)	1
Cross Examination of Plaintiff's Witness by Defense's Attorney	4
Direct Examination of Defense' Witness	4
Cross Examination of Defense's Witness by Plaintiff's Attorney	4
Closing Statement by Defense Attorney	1
Closing Statement by Plaintiff's Attorney	1
Judge's Verdict	2

NOTE: Offer objections during the trial, if needed. Objections should be legally sound and properly stated, and will be rated. See Objection Sheet in Appendix.

12. USE OF WITNESS: All facts in case must be exposed through attorney's questions and a single witness testimony. Both attorneys will use a witness selected from students within his/her class in attendance the day the case is to take place.

13. USE OF MATERIALS: During the 8-10 minutes preparation period, teams may use any notes, texts, or materials they feel would aid them in the preparation of their case.

During the trial, the student attorneys may use their own notes. However, extensive reliance on notes may negatively effect the student attorney's performance rating. Witnesses may not use notes during their testimony on the witness stand.

14. USE OF ADDITIONAL PERSONNEL: Student attorneys and witnesses may not receive assistance by teachers, classmates, or interested persons once the case selection has been made.

OBJECTIONS

1. FORM OF THE QUESTION	Manner in which the question is asked. Statements or comments may not be made, but must be in the from of questions.
2. LEADING QUESTION	Not allowed in direct examination. This is when the lawyer tells the story and gets a YES or NO from the witness.
3. ARGUMENTATIVE	When the attorney is having open arguments with the witness.
4. BADGERING	A relentless effort to break down the witness.
5. CONFUSING THE WITNESS	When the lawyer asks difficult or baffling questions that the witness does not understand.
6. UNINTELLIGIBLE QUESTION	Not related to the facts in issue.
7. BEYOND THE SCOPE OF THE WITNESS	Outside of the knowledge of the witness and what he/she is expected to know.
8. HEARSAY	When the witness testifies to something that he/she did not see, hear, or do himself/herself.
9. IRRELEVANT	Does not relate to the issue of the case.
10. DRAWING A CONCLUSION	When the witness draws a conclusion from what the lawyer is asking and the witness is not an expert in the field; or when the lawyer is drawing one and then makes a statement from what the witness has testified.
11. THE DOCUMENT SPEAKS FOR ITSELF	When the lawyer wastes time explaining obvious material evidence (example: birth certificate).
12. IMPROPER CONDUCT	The judge and attorneys go outside the scope of proper decorum.
13. ASKED AND ANSWERED	When a question has already been asked and answered, and there is no need for further clarification.
14. OPINION	Only an expert in a certain field may offer opinions.

STUDENT CIVIL LAW ONE ON ONE DEBRIEFING EVALUATION

ANSWER ALL OF THE FOLLOWING QUESTIONS:

1. Rate your participation in the contest using a scale of 1-5. Give reason for your rating.

2. List all of the positive aspects of the contest.

3. List the negatives of the contest.

4. If you were going to run the contest next year, what rules, if any, would you change?

5. Who did you think was the best witness?

6. Who was the best attorney?

Did the contest reinforce your knowledge of tort law?

8. Do you think using students as judges is beneficial?

CASE #1

The Plaintiff, Mr. Kearny, is suing the Defendant, Mr. Purcell, to collect a reward.

PLAINTIFF: MR. KEARNY

I was sitting in this restaurant having lunch when all of a sudden this Mr. Purcell, who was sitting at the next table, jumped up and started screaming that someone had stolen his hat and umbrella. The manager came over and tried to calm him down, but he was acting like he was fit to be tied. He was calling the thief all sorts of names. Finally, Purcell turned to everybody in the restaurant and screamed, "I'll give a hundred dollars to anyone who will catch the thief." Those were his exact words... Well, to make a long story short, I figured for one hundred bucks I'll give it a try. So, I ran out into the street and about two blocks away I caught the thief. Now Purcell refuses to pay me the hundred bucks.

DEFENDANT: MR. PURCELL

This is ridiculous...I was hot under the collar because my hat and umbrella had been stolen. I never thought anybody in his right mind would take me up on a crazy offer like that. Besides, why would I offer a hundred dollars reward for a crummy hat and umbrella worth $10.00? It's stupid...I'm glad this guy caught the thief and it's nice to have my hat and umbrella, but I'm certainly not going to pay him a hundred dollars for it.

CASE #2

The Plaintiff, Mr. Cott, is suing the Defendant, Mr. Tower, to recover damages based on profits Defendant is making.

PLAINTIFF: MR. COTT

Mr. Tower here is making a profit by running a business on my land. His property is right next door to mine. He found an old cave under both our properties and now he's busy taking tourists through the cave at a buck a head. Now I'm a fair man. I don't want to stop Mr. Tower from making a living, but I do want what is rightfully mine. Since the cave extends under my property, I claim that part of the profits should be mine.

DEFENDANT: MR. TOWER

This guy has a cave in his head. In the first place, I found the cave. In the second place, I am not trespassing on his property. The only entrance to the cave is on my land. Furthermore the cave is over 400 feet below his property. What does he think, that he owns all the land in the center of the earth? I say the cave is mine and I don't owe him a dime.

CASE #3

The Plaintiff, Mr. Judd, is suing the Defendant, Mr. Carr, for damages he suffered while he was riding in the Defendant's car.

PLAINTIFF: MR. JUDD

Well, I've known Joe Carr here for the past 10 years. Every Sunday in the summer we go fishing. We always take Joe's car because I don't drive. About six months ago, we left for our Sunday fishing trip. Somewhere near Four Corners, Joe takes a turn too fast and loses control of the car. Before I know what happened, bang, we hit a tree at the side of the road. Now I claim that Joe operated the car negiligently in losing control and hitting that tree, and I want damages.

DEFENDANT: MR. CARR

Everything my ex-good friend, Mr. Judd, says is true, except that he left out one small detail. Everything was fine until we go near Four Corners. Suddenly I became very sick and passed out. Now my good friend knows this is the first time in 10 years that anything like this has ever happened to me. The car left the road and hit a tree, but it certainly was not due to any negligence on my part. I don't see how I can be held responsible.

CASE #4

The Plaintiff, Mr. Meek, is suing the Defendant, Mrs. Meek, to have their marriage annulled.

PLAINTIFF: MR. MEEK

I agree that I promised to marry Judy. I further agree that we got a license and made all the arrangements with the minister. I even agree that we went to the minister's home and he performed the ceremony. But I do not agree that we ever got married. While I was standing there listening to the minister, I suddenly decided that I did not want to get married, so when it came time for me to say, "I do", I didn't say anything. I didn't even put the ring on her finger. As long as I didn't consent by saying, "Yes", I don't see how we can be legally married.

DEFENDANT: MRS. MEEK

This is all so embarrassing. We went through the entire marriage ceremony, and this big ninny just stood there and said nothing. Well, we figured he was just too shy or nervous, so we ignored it. Now he says he didn't want to get married in the first place. If he didn't want to get married, why did he take out the license and why did he show up at the minister's? No one dragged him there. Just because he didn't say, "I do", doesn't mean we aren't married.

CASE #1

The Illinois Court of Appeals held that the extravagant terms and other circumstances indicate there was no serious intent to make an offer. Therefore, Mr. Purcell does not have to pay the $100.

DECISION FOR DEFENDANT

CASE #2

The Mississippi Supreme Court held that even though the cave is 400 feet below the surface, it is still the Plaintiff's land and the Defendant cannot be unjustly enriched by the use of the Plaintiff's land.

DECISION FOR PLAINTIFF

CASE #3

The Court of Appeals, District of Columbia held that since Mr. Carr, while driving the car, was suddenly stricken by an illness which he had no reason to anticipate and which made it impossible for him to control the car, the law does not charge him with negligent driving.

DECISION FOR DEFENDANT

CASE #4

The New York Supreme Court held that the fact that he stood there through the entire ceremony and made no attempt to leave implied consent and the marriage is valid.

DECISION FOR DEFENDANT

ACTIVITY D: Civil or Criminal: So What?

Procedure:

This activity is designed to help students (a) review differences between civil and criminal cases as defined in our society, and (b) consider implication of those differences.

1. Ask students to identify specific kinds of cases that come to court (e.g. murder, robbery, traffic citations, divorce, slander). This phase of the lesson could be made interesting by using the "circle of knowledge" approach.

    a. Assign students to small groups (2-5 members) and assign one student to be recorder in each small group.

    b. Direct students to sit closely together and to keep their talking at the level of whisper at the loudest (a group may be disquaified if one of its members speaks loudly enough to be audible to another group).

    c. Ask students in each group to specify types of legal cases according to these rules: Have each student dictate to the recorder a type of case. Students must speak in strict clockwise order. If a student cannot think of a type of case, the student may not be by-passed. Other students may, however, give clues, as in charades or by tracing letters with index fingers onto the palms of hands. Give groups a time limit (2-4 minutes).

    d. After the time limit is up for small groups, collect ideas from the entire class in this manner: Each group is given a number (e.g., group 1, group 2, group 3). First, group 1 identifies a type of case on its list, followed by groups 2,3,4, and 5, etc. in order. Once each group has identified one type of case, groups continue suggesting types of cases in reverse order until group 1 has completed its second turn. Then, groups 1,2,3, and 4 suggest more cases in order. The teacher lists type of cases under the number of the group until groups have listed all the types of cases on their lists.

    e. If a group identifies a type of case that has already been listed by the teacher, another group may challenge and will gain a point if its challenge is found to be accurate (it loses a point if its challenge is found to be inaccurate). The group that was successfully challenged loses one point.

    f. Points are tallied based on challenges and on the number of cases listed (one point for each type of case on the group's list).

2. Ask students to identify which cases are criminal as opposed to civil (they may circle such cases on the chalkboard or on the transparency used in 1-d above.

3. Ask what criminal cases have in common (a law was violated; the state assumes the role of plaintiff in the trial). Ask what civil cases have in common (violation of law is not of concern in the case; the plaintiff is a private citizen who has a complaint against someone else).

4. Have students speculate on how things would be different if civil and criminal cases were classified differently (e.g., if murder would be considered a civil case, if slander would be regarded as a criminal matter). Encourage students to think in terms of hypothetical instances and their consequences. (For example, suppose an old man who is murdered has no friends or family. Would such a problem come to court? Would murder become an act that would be likely to go unpunished? Take another example: Suppose slander is classified as a crime. If a person said something derogatory about another person that would injure his reputation, the injured party could contact the police and have that person arrested, following which he would be tried in a criminal case and subject to fine or imprisonment. Would such an approach affect the First Ammendment? Discuss whether students prefer changing the category of the type of case, or whether they prefer the status quo. Students could present their ideas in informal discussion, in panel discussion, in debates or in essays. Local attorneys may serve as resource persons to answer student questions or to participate in the discussion.

ACTIVITY E: See Mock Trial - Criminal Justice Process section of this Guide

ACTIVITY F: Field trips and guest speakers can be used effectively in this topic. See Types of Courts.

THE JUDICIAL PROCESS

GENERAL OBJECTIVES:

1. By participating in the following activities, students will demonstrate an understanding of the judicial process.
2. Students will develop useful questioning, critical thinking, and oral advocacy skills.
3. Students will be able to define the roles of police officer, prosecutor, defense attorney, judge and bailiff.
4. Students will develop an understanding of law related concepts.
5. Students will acquire practical knowledge about police, and court procedure.

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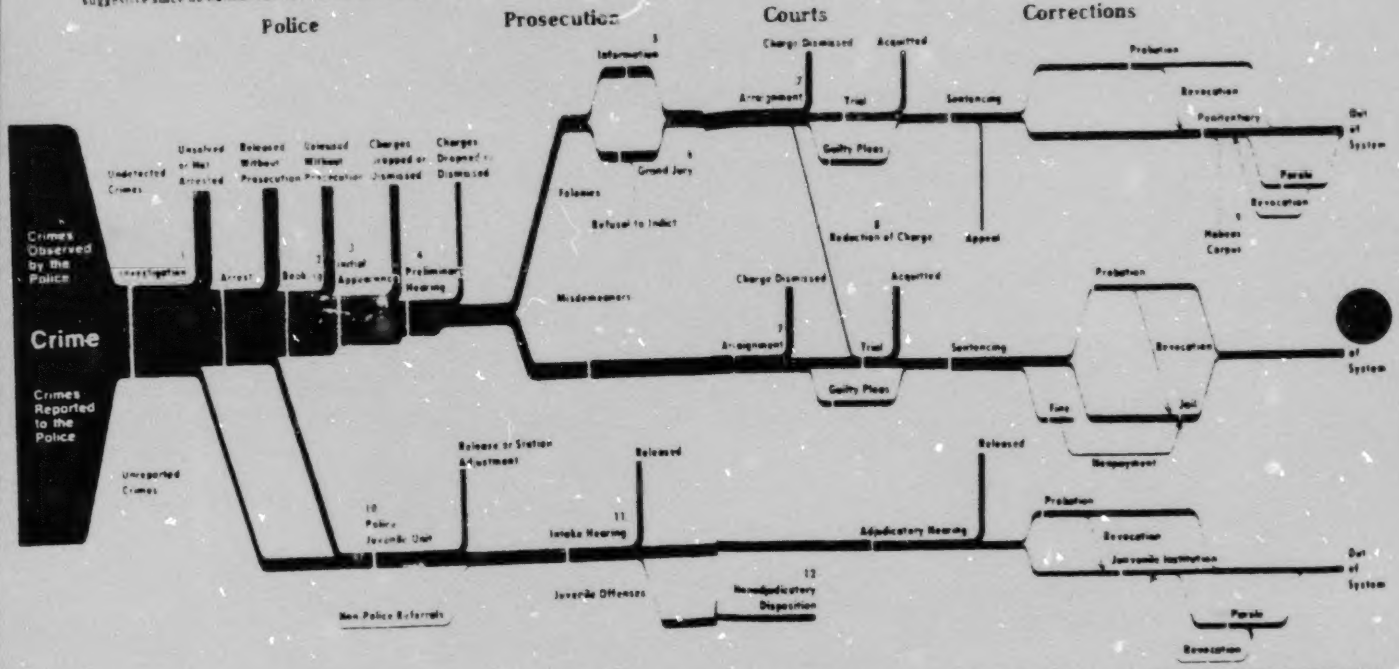
FIGURE 4 A General View of the Criminal Justice System

This chart seeks to present a simple yet comprehensive view of the movement of cases through the criminal justice system. Procedures in individual jurisdictions may vary from the pattern shown here. The differing weights of line indicate the relative volumes of cases disposed of at various points in the system, but this is only suggestive since no nationwide data of this sort exists.



1 May continue until trial.

2 Administrative record of arrest. First step at which temporary release on bail may be available.

3 Before magistrate, commissioner, or justice of peace. Formal notice of charge, advice of rights. Bail set. Summary trials for petty offenses usually conducted here without further processing.

4 Preliminary testing of evidence against defendant. Charge may be reduced. No separate preliminary hearing for misdemeanors in some systems.

5 Charge filed by prosecutor on basis of information submitted by police or citizens. Alternative to grand jury indictment.

6 Reviews whether Government evidence sufficient to justify trial. Some States have no grand jury system; others seldom use it.

7 Appearance for plea; defendant elects trial by judge or jury (if available).

8 Charge may be reduced at any time prior to trial in return for plea of guilty or for other reasons.

9 Challenge on constitutional grounds to legality of detention. May be sought at any point in process.

10 Police often hold informal hearings, dismiss or adjust many cases without further processing.

11 Probation officer decides desirability of further court action.

12 Welfare agency, social services, counseling, medical care, etc., for cases where adjudicatory handling not needed.

how the criminal justice system works.
The numbered paragraphs explain what's happening in the drawings.

1. INTENT AND ACT
SPECIAL! RADIO CASSETTE $150
2. APPREHENSION
SALE!
3. DETENTION AND BOOKING
4. ADVISING ON CONSTITUTIONAL RIGHTS
5. ARRAIGNMENT AND CHARGING
6. ATTORNEYS ARE ADVERSARIES
LAW
7. ATTORNEY/CLIENT PRIVILEGE
8. PLEA BARGAINING
9. OFF TO COURT FOR TRIAL.

1. INTENT AND ACT – For a crime to exist, there must be *both* intent to break the law and an actual lawbreaking act.

2. APPREHENSION – The offender must be caught in the act of or arrested for committing a crime. There must be evidence that a crime was committed.

3. DETENTION/BOOKING – The apprehended offender is detained by the police and booked into the local jail. Booking includes full identification – fingerprinting and photography.

4. ADVISING ON CONSTITUTIONAL RIGHTS – The suspect must be advised of his constitutional rights before he is questioned. (He may be arrested without being advised of his rights, as long as no questioning takes place.)

5. ARRAIGNMENT / CHARGING – The offender is brought to court and charged with committing a crime. This is called an arraignment. The *defendant* (person charged with a crime) is represented by an attorney. Charges are presented by the prosecutor. The defendant pleads guilty or not guilty.

6. ATTORNEYS ARE ADVERSARIES–Justice is served because the people and the defendant are represented by equally qualified attorneys. The defense attorney tries for the best possible treatment for the defendant. The prosecutor seeks justice on behalf of the people.

7. ATTORNEY/CLIENT PRIVILEGE – All communication between attorneys and clients about the case is completely confidential.

8. PLEA BARGAINING – Attorneys for the people and the defendant can try to arrive at a just solution to a case through plea bargaining. Generally, a defendant will plead guilt to a lesser included crime than the one in the charges or agree to a less than maximum sentence in exchange for agreement that the prosecution will change its case accordingly. One idea behind plea bargaining is to save time and money in the courts.

9. OFF TO COURT FOR TRIAL – After attorneys have prepared their cases (or agreed to a settlement), the case is off to court.

OBJECTIVES:

1. Using local, familiar settings, students will witness the arrest and booking of a man being charged with DWI.
2. Students will describe the arrest process.
3. Students will describe the booking process.

INFORMATION FOR TEACHERS:

1. The slide presentation, "So You Think You Have Problems Now?" was shot entirely in Cortland County.
2. The crime committed is DWI. The arrest procedure and booking are similiar for most crimes.
3. The presentation deals with adult criminal justice procedure.
4. Materials needed: slide projector and carousel, slide show, "So You Think You Have Problems Now?" with accompanying tape.
5. Begin by asking students what happens to a person who gets arrested? Brainstorm ideas.
6. Advance slide to frame 1 "What's Law?". Begin cassette.
7. Advance slide when a beep is audible. Note, sometimes there is a single beep, and others is a double beep. Advance just one slide in either case.

VOCABULARY:

arrest
booking
breathalyzer
DWI
field test
fingerprints
Miranda Rights
mug shot

INFORMATION FOR TEACHERS:

1. Function: The purpose of the initial appearance and fixing bail of a defendant is to: (a) inform the defendant of the nature of the charges against him/her, (b) guarantee the defendant's right to counsel and, (c) determine whether the defendant will be released from custody, and, if so, under what conditions.

2. Misconceptions:

   a. Bail is not a form of punishment. It is to insure that the defendant will return to court.

   b. Bail money is retrieved when the defendant returns to court.

   c. If a defendant cannot pay the bail, he can use the services of a bail bondsman. A bail bondsman will put up the bail money for a fee (usually 10%, but in some cases as high as 25%).

   d. The initial appearance before a judge is called presentment, at which a judge will set a date for arraignment.

VOCABULARY:

bail
bail bond
custody
initial appearance
presentment
summons
waive

ACTIVITY: Initial Appearance and Bail Game

OBJECTIVES:

1. Students will simulate the court process of initial appearance and arraignment.
2. Students will explain the function of bail.
3. Given 14 sample cases, students will decide release and bail.

Materials:

1. Instructions to participants - reproduce as many copies as needed.
2. 14 case study reports. - One copy each should go to the judge, the prosecutor, and the defense lawyer. An individual case should go to each defendant. (Reproduce and cut in two)

To Play:

1. Assign students the roles of judge (1 or 2), public defender (2 or 3), prosecutor (2 or 3), clerk (one for each judge), and defendants (14).
2. Handout "Instructions to Participants" and case studies. Have student read them.
3. Students should prepare for their roles. Judges and clerks should make docket, prosecutors should prepare recommendations for release, defendants should retain defense lawyers and discuss plea.

Procedure:

1. Defendants are called before a judge. They appear by being taken from custody or responding from an appearance summons issued prior to court date.
2. The defendant is identified, and the charges against him/her are read.
3. The judge asks defendant if he is represented by counsel. If not, the judge determines if the defendant is eligible for legal aid. Determination is based upon income and the number of dependents.
4. The defendant is allowed to enter an initial plea to the charges.
5. The judge then determines release condition based on the guidelines given in Judge's Instructions. Prosecutors may offer comments and suggestions to the judge.

Preparation for the Game:

1. Try to simulate a courtroom as much as possible. For a courtroom diagram, see Mock Trial materials. Gavels, robes, flags, pitchers of water, and name plates all add to the atmosphere of the game.
2. Either assign roles to the students, or have them chose. In large class sizes, you may want to create two independent courts.
3. Reproduce, cut and distribute cases. One copy each should go to Judge, prosecutor, defense attorney(s) and defendant.
4. Allow time (15 min.) for defendants to find and meet with defense attorney(s), Judge and bailiff should plan and post docket.

Post Simulation Activities:

1. Discuss actions taken during the game. Ask students if they were in the role of judge, what would they have decided differently.
2. Arrange for a trip to court to witness an actual arraignment session (see Community Resources).

INITIAL APPEARANCE AND BAIL

This is a game to simulate the court process of appearing before judge and fixing bail. Each student will be assigned a role to play. 14 cases will be heard. Each defendant will have the opportunity to appear before a judge, with a lawyer, and make a plea to a charge. The judge will then determine the release of the defendant.

INSTRUCTIONS TO PARTICIPANTS:

Clerk:

1. Post docket. List the cases, as they will be called, on the board.
2. As the judge enters the courtroom, instruct to people to, "All rise. This court with Judge ________________ presiding is now in session."
3. Calling the cases and the reading of the charge. In a loud voice call the name of the defendant to appear. When he/she appears, ask, "Are you _______ ___________". State the charge against him/her.

Judge's Instructions:

1. Courtroom Procedure. As each defendant is brought before you, determine:
    a. If the defendant has counsel.
        1. If yes, ask who?
        2. If no, ask if he/she would like counsel.
            (i) If yes, appoint him one and postpone the case until the end of the docket.
            (i) If no, urge him to retain counsel. If he persists in refusal, go on.
    b. Make sure defendant understands the charge against him.
    c. Ask the defendant as to his plea on the charge.
        1. If not guilty, determine release and set trial date.
        2. If guilty, determine release and set sentencing date.

2. Options for release:
    a. Release on personal recognizance.
    b. Release to the custody of another person (common in juvenile case)
    c. Set bail (not less than $100 or more than $20,000).
    d. No release, detained in county jail.

3. Factors to look at in determining release.
    a. Is defendant a danger to himself or community?
    b. Does the defendant reside in the community?
    c. Is defendant employed?
    d. What is his past record?
    e. Is the person a good risk to return to court?

4. Factors for determining bail.
    a. Seriousness of the crime.
    b. Strength or prosecution's case.

District Attorney:

1. Meet with the other D.A.'s and decide who will prosecute each case.
2. Review the cases before going to court.
3. Listen to the pleas made by the defendants.
4. If you see fit, make recommendation about release to the court.

Public Defender:

1. Meet with the other P.D.'s and decide who will take the case.
2. Meet with the defendant. Inform him that you have been assigned to his case. Discuss a plea.
3. You may speak for your client in answering questions.
4. Try to do the best for your client. You may make recommendations to the judge in determining release. Be sure to bring out any good qualities your client may have. KNOW THE FACTS IN YOUR CLIENT'S CASE.

Defendant:

1. Know the facts of your case before you appear in court.
2. You will be assigned a lawyer. Decide if you want one.
3. Meet with your lawyer. Decide how you will plea to the charges.
4. Act in accordance with the character you are assigned.

Case 1

Name: Jerry Davis

Age: 26

Charge: Possession of Narcotics

Residence: 619 30th Street, lives alone, no family or references

Employment: Unemployed

Education: 10th grade

Criminal Record: 5 juvenile offenses. 2 arrests for petit larceny as an adult. One conviction, served probation.

Comment: Arrested while leaving a pharmacy carrying a large amount of morphine. Urine tests indicated present use of narcotics.

Case 2

Name: Gloria Hardy

Age: 23

Charge: Prostitution

Residence: 130 Riverside Drive, Apt 10

Employment: Royal Massage Parlor (reportedly earns $1,580 per week)

Education: High School Graduate

Criminal Record: 5 arrests for prostitution, 2 convictions, currently on probation

Comment: Allegedly involved in prostitution to wealthier clients.

Case 3

Name: Stanley Wexler

Age: 42

Charge: Possession and sale of Narcotics

Residence: 3184 Sunset Drive, lives with wife and two children

Employment: Self-employed owner of a drug store chain, net worth $250,000

Education: Completed college, advanced degrees in Pharmacy and Business Administration

Criminal Record: None

Comment: Arrested at his store by undercover police after attempting to sell a large quantity of unregistered morphine. Alleged to be a big time dealer. No indication of drug usage.

Case 4

Name: Michael McKenna

Age: 19

Charge: Armed Robbery

Residence: 412 Pine Street, lives with parents

Employment: Waiter, Vanguard Rest.; earns $100 per week

Education: 10th grade

Criminal Record: 8 juvenile arrests (runaway, possession of marijuana, illegal possession of firearms, four burglaries; spent two years in juvenile facility)

Comment: Arrested after being identified as being assailant in a street hold up. Alleged leader of a street gang. Police consider dangerous. No indication of drug use.

Intial Appearance and Bail

Case 5

Name: Wilma Lollar

Charge: Possession of stolen mail and forgery Age: 34

Residence: 5361 Texas Street, lives with common law husband and two children from prior marriage.

Employment: Works in a department store. Earns minimum wage.

Criminal Record: 9 arrests (mostly drunk and disorderly and vagrancy), 2 convictions:

1. DWI - fines and loss of license
2. Forgery - completed two years probation

Comment: Arrested for attempting to steal stolen social security check. Probation Officer indicates defendant has a drinking problem.

Case 6

Name: Betty Green Age: 30

Charge: Third degree petty larceny: A/Misd.

Residence: 411 East Meadow Drive, Married, has 2 children 3, 10

Employment: Housewife. Husband earns $30,000 per year as a grocery store manager

Education: High School graduate

Criminal Record: No prior arrests

Comment: Arrested in a drugstore after being observed placing several items (pen, a wrench, and greeting cards) in her purse and leaving the store without paying for them.

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Case 7

Name: Charles Kemp

Charge: Assault, 3rd degree A/Misd.

Age: 40

Residence: 36 Pleasant Street

Employment: Elementary School Teacher

Education: BA, MS in Education

Criminal Record: 1 count of DWI (changed to DWAI), 2nd degree assault

Comment: Arrested after wife filed for charges. He is accused of wife abuse, and has been arrested before. His wife feels she will be in danger if he is set free.

Case 8

Name: Rhonda Bates

Age: 35

Charge: Kidnapping; attempted suicide

Residence: 36-51 83rd St., Apt. 231-A (lives with roommate)

Employment: Secretary for Municipal Transit Authority Chief

Education: High School graduate

Criminal Record: None

Comment: Divorced twice. History of emotional distress. Arrested after holding her former husband's girlfriend hostage, demanding past alimony payment. After police officers convinced her to release the hostage, she cut her wrists in an attempted suicide.

Case 9

Name: Howie Kane

Charge: First Degree Rape

Age: 25

Residence: St. Mary Medical School, Margret Hall

Employment: 4th year medical student

Criminal Record: 1 arrest for statutory rape; charge dismissed.

Comments: Arrested for raping a nurse in the hospital parking garage as she was leaving work at 4:00 AM.

Case 10

Name: Marvin Whitlow

Age: 30

Charge: Second degree grand larceny

Residence: YMCA

Employment: Seasonal Employment: Carnival worker

Criminal Record: 2nd degree grand larceny; breaking and entering, possession of a concealed weapon, possession of marijuana. Spent 30 days in county jail.

Comment: Arrested for snatching the purse from an elderly woman in broad daylight. Repeat offender.

Case 11

Name: Millard Ormsby

Age: 23

Charge: Robbery

Residence: Weldon Hotel, 26 3rd Avenue

Employment: Unemployed, Hospital Service Worker

Criminal Record:

1. 17 juvenile offenses. Served 4 years in State Industrial School.
2. Theft, 3rd degree (3 yrs. prev.), 2 years probation
3. Theft, 1st, Assault 3rd, 2-5 State Prison

Comments: Arrested for robbing a man on the street, then beating him up with a small baseball bat. Victim suffered multiple cuts and bruises and a cracked rib. Suspect took $17.00.

Case 12

Name: Sharon Buckley

Age: 21

Charge: Possession of dangerous narcotic with intent to transport - B/Felony

Residence: JFK Residence Hall, Central State College

Employment: Senior at Central State College

Criminal Record: None

Comments: Defendant was stopped for speeding and failure to use directionals while turning. Upon interrogation, she became verbally abusive. She was requested to get out of car and empty pockets. Four marijuana cigarettes and a 13 oz. bag of heroine was produced.

Case 13

Name: Roberta Erikson

Age: 28

Charge: Murder: A/Felony

Residence: 2035 South Lake Drive

Employment: Temporary and part-time sales clerk, housewife.

Criminal Record:

1. DWAI - 6 months probation
2. Disorderly Conduct - $100 fine

Comments: Defendant was found at the scene of an accident. A breathelizer test registered .18. One of her children (7) died as result of the accident.

Case 14

Name: Enestine Gould

Age: 22

Charge: Forgery - A/Misd.

Residence: 126 Merrill Road, Apt. 24

Employment: Waitress and Barmaid

Criminal Record: None

Comments: Arrested at Grandpenny Dept. Store for attempting to cash stolen Traveler's Checks.

Plea Bargaining

OBJECTIVES:

1. Students will describe the process of plea bargaining.
2. Students will list arguments in favor of, and opposed to, plea bargaining.
3. Students will form opinion to the morality and justness (injustness) of plea bargaining.

INFORMATION FOR TEACHERS:

1. Definition - Granting certain concessions to the defendent, usually a reduced charge or sentence, in an exchange for a plea of guilty.
2. Justification of Plea Bargaining:
   a. Our criminal justice system is incapable of handling the volume of cases in demand.
   b. Too many crimes - too many criminals.
   c. Due process of law is slow and cumbersome.
   d. To obtain pleas of guilt, courts must offer lieniency.
   e. Encourages rehabilitation by tailoring sentences to needs.
   f. Pleading guilty is the first step for criminal to recognize his responsibility and need to reform.
   g. Enables the state to grant lieniency for exposing other criminals, thereby exposing a greater number of unlawful activities.
   h. Offers opportunity for defendent to take an active part in the proceeding against him.
3. Negative argument concerning Plea Bargaining:
   a. By offering concessons justice is sold.
   b. Hurts the innocent and rewards the guilty.
   c. A person faces a tougher sentence by exercising right to trial.
   d. Justice can only be served by full and fair trials.

VOCABULARY:

plea
plea bargaining

ACTIVITY A: Plea Bargain Simulation

Procedure:

1. Refer to the cases in Intital Appearance and Bail Game
2. Assign 2 judges, 2 state's attorneys and 2 public defenders.
3. Public defenders should meet with defendants to discuss possible plea bargains.
4. The judge should post a docket schedule of cases to be called before him/her.
5. Public defenders and state's attorneys should meet to arrange a bargain.
6. Judges call cases before him according to the docket. The law requires that please of guilty may not be accepted unless the judge is satisfied that the defendant is actually guilty. The judge, therefore, must ask each defendant the question on the handout, Judge's Information.
7. For possible sentences, see subtopic: Sentencing.

DGES INFORMATION

Required questions to ask defendants who intend to plead guilty in exchange for a plea bargain.

1. Do you understand the charges against you and the maximum penalties authorized by law?
2. Are you in fact guilty of the charge you are pleading guilty to?
3. Are you pleading guilty voluntarily?
4. Has any person treatened you or made you any promises to influence you to plead guilty?
5. Do you understand that you have the right to a trial by jury and that you are waiving that right?

Do not accept a guilty plea unless the defendant gives the following answers to the above questions:

A. Yes
B. Yes
C. Yes
D. No
E. Yes

You must always accept a plea of not guilty without questions. The judge must order a continuance (trial at another time).

ACTIVITY B: Opposing View Points

Procedure:

1. Have students read Viewpoint 8 "Plea Bargaining Aids Justice", and Viewpoint 9, "Plea Bargaining Corrupts Justice".
2. Set up an Advocate activity (for instructions, see How Has Justice Been Meeted Historically? - Activity F).

"The advantages of a plea bargaining system properly limited with appropriate safeguards far outweigh any objectives."

viewpoint 8

Plea Bargaining Aids Justice

George N. Bashara, Jr. and Samuel C. Gardner

Those of us who are trained in the common law and the American constitutional system stand in awe of the process and guarantees by which this country protects the criminal defendant. The presumption of innocence, the absolute right to trial by jury, the guarantee of assistance of counsel, the right of confrontation of witnesses, etc., create a series of hurdles which the people must surmount to obtain a conviction. The process is an admirable and impressive system of justice—but it is also expensive in terms of both time and money.

One device which helps to minimize costs is the plea bargain (which includes both "charge bargaining" and "sentence bargaining")....

The nature of plea bargaining is an exchange; as one source has defined the term:

> Plea bargaining is the process whereby a defendant agrees to plead guilty (or no contest) as part of an agreement with the court or prosecutor. The usual effect of such an agreement is that a trial is avoided and a defendant's potential punishment may be fixed within certain boundaries or agreed upon with specificity.

"Charge bargaining," mentioned above, occurs when a defendant waives his or her right to stand trial in exchange for a reduced charge (one with some of the original counts dismissed or one charging a lesser offense). "Sentence bargaining" occurs when the prosecutor agrees to stipulate to or recommend a particular sentence to the court in exchange for a plea of guilty. Although charge bargaining is the most widely used form of plea bargaining, it is often no more than thinly-veiled sentence bargaining since the reduced charge usually carries a reduced sentence.

The Economics of Plea Bargaining

One proposed model of the plea bargaining process casts it in economic terms:

> The model views the plea bargaining process as analogous to a buying-and-selling transaction in a market that has no fixed prices, like that of a push-cart peddler. The defense counsel or defendant is a buyer seeking as low a price, charge, or sentence as possible. The prosecutor is a seller seeking as high a price, charge, or sentence as possible within the constraints imposed by the criminal statute or code—and possibly his sense of equity. Each has in mind a rough notion of how high or low he is willing to go before breaking off negotiations and turning to the trial alternative.

Thus, if plea bargaining is properly practiced, a bargained plea should accurately reflect the point at which the prosecutor's and the defendant's expectations of conviction intersect.

What the defendant gives up in this bargain is, of course, the opportunity to win an acquittal or dismissal at trial. In the absence of plea bargaining, however, a defendant who is free on bail or one who receives a prompt trial has little or no incentive to plead guilty. Moreover, the people obtain what the defendant sacrifices; not only is the expense of trial avoided, but also the opportunity for acquittal or dismissal is bypassed and conviction is assured.

If the bargaining is done properly, the sentence or charge will be reduced proportionately to the probability of conviction. If a prosecutor has weak evidence, reduction of the charge or sentence is entirely proper....

As another writer has explained: "Furthermore, when the defendant has some idea of the maximum punishment, he or she perceives the system as being more predictable and equitable and less arbitrary."

The most well-known advantage of plea bargaining is the reduction of court congestion. As noted previously, guilty pleas accounted for sixty-eight percent of all dispositions in Detroit Recorder's Court in 1977; without those pleas, an additional seventy judges would have been required to handle the trials alone, at a cost of $15 million.

Plea bargaining also presents some other lesser benefits to the judicial system. It has the effect of limiting appeals, and it can be a useful device in obtaining evidence against "higher ups" in organized crime from defendants who turn state's evidence. Nevertheless, its

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greatest advantage lies in producing convictions without the expense of a trial.

Critics of plea bargaining fall into two basic categories: those who believe plea bargaining deprives defendants of important constitutional rights and pressures innocent defendants to plead guilty, and those who believe that defendants are "getting off too easy" with reduced charges and sentences. Although some of those criticisms appear to be valid, the advantages of a plea bargaining system properly limited with appropriate safeguards far outweigh any objections....

"The most well-known advantage of plea bargaining is the reduction of court congestion."

Only the argument that plea bargaining undermines the faith of the public in the judicial system has any validity, and that problem can be minimized or resolved by the proper practice of plea bargaining. Plea bargaining should not involve "selling justice short"; if all of the factors are weighted properly, plea bargaining should achieve justice. It is only when prosecutors are overly-concerned with case loads or conviction rates that bargained pleas shift the balance in favor of defendants.

George N. Bashara, Jr., has been a judge of the Michigan Court of Appeals since 1973. Samuel C. Gardner is Chief Justice of the Recorder's Court of the City of Detroit.

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> *"Plea bargaining is a distorted and disgraceful blight on our criminal justice system which ought to be abolished."*

viewpoint 9

Plea Bargaining Corrupts Justice

Dorothy W. Nelson

Each year, when I take a seminar class to visit California's Chino State Prison, I am startled by the complaints about plea bargaining. It is clear that a plea bargaining system, however defined, convinces most, if not all, defendants that:

- The criminal justice system is a fraud.
- It forces defendants to plead guilty to acts which they did not commit when some are innocent and more are in fact guilty of graver offenses.
- It encourages a prosecutor to "overcharge" and thus have room to bargain when the very overcharging usually means that higher bail will have to be met by defendants who know that those out on bail have a greater chance of acquittal.
- A forced plea in return for a good bargain helps to cover up unlawful arrests, and, if one doesn't plead guilty and insists on the constitutional right to trial, he will usually receive greater punishment for exercising his rights.
- If one who has committed a crime simply wants to plead guilty to the crime as charged and accept his punishment and get it over with, he is regarded as a "fool" by any defense lawyer worth his salt.

Disgraceful Blight

The prison conversations, a review of the empirical data available, and a conviction that there are alternative procedures available lead me to conclude that plea bargaining is a distorted and disgraceful blight on our criminal justice system which ought to be abolished. Admittedly, it would be folly to declare the abolition of plea bargaining merely to have the practice displaced to an earlier stage of the criminal justice system, or increased reliance on tacit rather than explicit plea bargaining. It is possible, however, to eliminate the bargaining or "bartering," as some would term it, through an expanded form of the felony preliminary hearing.

As normally conducted in most areas of the country, plea bargaining involves an agreement between the prosecutor and the defense attorney, subject to the approval of a judge, by which the defendant agrees to plead guilty in return for a promise by the prosecutor to make one of a wide array of concessions to the defendant: a lighter sentence, a dismissal of additional charges, acceptance of a plea to a lesser included offense, or recommendation of a specific punishment preferred by the defendant.

The accused's consent is a waiver of his Fifth Amendment right not to incriminate himself, and the Sixth Amendment right to trial including the right to cross-examine witnesses and the right to a jury.

The Chino inmates maintain, and many studies confirm, that private defense attorneys, public defenders, and appointed attorneys are all subject to bureaucratic pressures and conflicts of interest that fail to safeguard the fairness of the bargained plea of guilty.

Private criminal defense counsel may achieve financial success by handling trials of a few wealthy clients or handling a large volume of cases for less than spectacular fees. In the latter case, "a guilty plea is a quick buck."

Not all lawyers, of course, care only about their pocketbooks, but the financial interest of an attorney is a factor in cases where the client does not have enough money to go to trial but does have enough to pay the attorney for the entry of a plea.

Public defenders, although salaried, enter bargained-for pleas as often as private attorneys. Many times, their heavy case loads force them to enter large numbers of pleas just to "keep current."

If the indictments of plea bargaining are correct, why did the Supreme Court defend the practice in Brady v. United States in 1969?

The court, noting the small percentage of cases currently going to trial (approximately 10 percent), extrapolated the awesome consequences if plea bargaining were outlawed. If the number of trials increased to 20 percent, the costs of the system would be doubled. Plea bargaining, then, appears to exist out of expediency and the presence of counsel provides a rationalization for the court's validation of the practice. But the conflicts of interest of defense counsel, private and public, already noted, tend to invalidate that claim of protection. The national Advisory Commission on Criminal Justice Standards and Goals called for an end to the practice no later than 1978.

Expand Pretrial Discovery

One viable alternative is the expansion of criminal pretrial "discovery" by--that is, disclosure of information to—the defendant. Greater pretrial discovery would affect the defendant's estimate of whether or not he would be convicted and would play a crucial role in deciding how to plead just as it does in encouraging voluntary settlement in civil cases.

There could be a wider use and standardization of informal discovery requests whereby information could be exchanged between the prosecutor and defense counsel without court order. As it is now, when the prosecutor has a strong case, i.e., legally admissible evidence proving guilt, he generally permits broad discovery by the defendant to encourage him to plead guilty. This should be encouraged while at the same time discouraging the present practice of permitting only limited discovery when the prosecution's case is weak.

"Heavy caseloads force [public defenders] to enter large numbers of pleas just to 'keep current.'"

Perhaps more important, greater discovery should take place at the preliminary hearing—because almost all cases of criminal defendants who are bound over for trial in felony cases are processed through a preliminary hearing, and owing to the prevalence of guilty pleas entered before these cases reach the trial stage, the preliminary hearing is the critical stage for most cases. Most magistrates or judges at preliminary hearings, however, fail to exercise their inherent powers to permit broad discovery at that time. They use the preliminary hearing to determine only if a crime has been committed and whether or not there is probable cause to believe that the defendant committed it. A recognized right of defense counsel to interrogate prosecution witnesses for discovery purposes would assist counsel in advising his client how to plead. Such improvements would lead to a new respect for the criminal justice system and thereby contribute to a broadened support for the administration of justice in our country.

Dorothy W. Nelson is a US Circuits Judge in the 9th Court of Appeals.

CTIVITY C: Courts at the Crossroads

Procedure:

1. Have students read "Courts at the Crossroads", by Gary Riulin

2. Discuss student reactions to the:
   - a. relationship between the defense lawyer and the defendant.
   - b. relationship between the defense lawyer and a prosecutor.
   - c. relationship between the lawyers and the judge.
   - d. defendant. Is he treated justly?

BEST COPY AVAILABLE

ACTIVITY C: Student Handout

COURTS AT THE CROSSROADS

Gary Rivlin

Two public defenders, a state's attorney, and a judge sit casually in the judge's chambers of a Cook County (Ill.) courtroom during a midmorning recess. The judge is talking about a fast-food franchise he's thinking of investing in. The public defender brings up the case of an alleged armed robber: "The Martineau* case—what are we going to do about this one?" "What'd he do?" asks the state's attorney. The defense replies, "A simple robbery, with only a few priors. He's not a bad guy." He adds after a pause, "The minimum's three." "How many prior robberies?" the judge asks. "A few your honor, but never a weapon." The judge laughs. "We've got to give him more than three," he says. The state's attorney recommends four. "Fine," says the public defender. "Good," says the judge. The state's attorney scribbles a note on Martineau's folder. The conversation returns to chicken franchises.

Three floors below, a public defender and his client discuss their case outside the courtroom. "The deal they're offering is beautiful. Two years is nothing when you think of what you could have gotten."

The defendant, Jason Richards, is not so sure. He says nothing. He is clearly less excited than the public defender.

"Listen, it took a lot of time to get this deal and if you don't take it this time, I don't know if the offer will be as sweet."

"I don't know," Richards says, looking down at the ground as if the answer might be there. After a pause, "What would you do?"

"It's your decision. I can't make it for you."

"It's . . . I've been there a few times before, you know. . . ." The defendant goes over his long history in jail and the troubles he faces at home. The public defender isn't interested. He looks away. He asks a passing colleague how a wedding went this past weekend.

The public defender finally doesn't want to hear anymore. He interrupts while Richards is telling of his experiences in a drug rehabilitation program: "It's a great deal, but it's your decision. Court's back in session in twenty minutes. I'll talk to you before that, and you let me know." The defendant walks down the hall to the men's room. "He'll take it," the public defender says with confidence. Twenty minutes later, the defendant is standing before the judge, listening to him explain what it means to plead guilty. He has accepted the deal.

". . . And you understand that by pleading guilty, you are waiving your right to trial, to present all evidence," the judge asks, paying lip service to the official rules of procedure. He speaks in a persistent monotone, reciting the tired formulas of the judicial process. At one point, the defense attorney nudges his client so he'll respond when the judge asks, "Have you been pressured in any way, or coerced into entering a guilty plea?"

A case in a third Cook County courtroom involves armed robbery. Unlike the first two, this case is tried before a full jury. The state has offered the defendant, Linda Campobasso, three years prior to trial. The public defender feels it is a "real sweet deal." He explains to Campobasso that her case is a probable loser, which would mean extra years in jail. He strongly recommends accepting the deal. But she remains adamant. Campobasso wants to exercise her right to a trial, no matter what the offer. The public defendant calls her "the crazy lady."

Campobasso is found guilty and sentenced to six years. The state's attorney: "The more you tax the system, the greater the sentence." The public defender: "You pay for the time, energy, and efforts you've wasted." Campobasso? She is now serving the first few months of her sentence. She committed the cardinal sin—she held to her convictions—and now she has plenty of extra time to reflect on her mistake.

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*All of the accused have been given a

OBJECTIVES:

1. By participating in mock trial, students will understand the roles of various court participants.

2. Students will gain insight in to the laws and defenses of second degree murder.

3. Students will describe the steps in a criminal trial procedure.

4. Students will acquire practical knowledge about courts and trial procedure which can be valuable should they ever be a witness in a real trial or be participants in a legal action.

INFORMATION FOR TEACHERS:

1. Even though the activities are specific to the Smith case, the format and rules can be adapted to any mock trials.

2. Preparation for mock trial
    a. read anc become familiar with the case
    b. try to simulate an actual courtroom as much as possible. Gavels, robes (graduation robes work nicely), flags, pitchers of water, and nameplate for the judge are all suggested and add to the atmosphere of the mock trial.
    c. Run off enough copies of handouts (see Mock Trial Materials Chart). It is suggested that packets be made for the judge, defense attorneys, district atttorneys and yourself.

3. Introducing the Mock Trial
    a. Distribute mock trial materials to the class
    b. Discuss the facts of the case (see Overview)
    c. Discuss the laws involved (see Penal Code)
    d. Students should be selected to play the various roles. In a class size of 25, it is suggested that lawyer teams of two to three be made. It is further recommended that students be allowed to chose the role they are going to play. Teacher descretion is advised in matching student ability and maturity to the roles of judge and lawyers.
    d. Students should form groups according to their roles. Tasks are to be assigned to help students prepare for their roles. Suggested groups and tasks are:

        Judge
            a. become familiar with case and witness statements.
            b. read and be familiar with the Penal Code relevant to case.
            c. be able to apply rules of evidence
            d. read and rehearse instruction to the jury

        Defense Attorneys
            a. develop strategy for defense
            b. opening statement
            c. cross examination of prosecution witnesses
            d. direct examination of defense witnesses
            e. closing statement
            f. familiarize rules of evidence and trial procedure

Prosecuting Attorneys

- a. Develop a strategy for prosecution
- b. Opening statement
- c. Direct examination of prosecuting witnesses
- d. Cross examination of defense witnesses
- e. Closing statement(s)

Jurors

- a. Read jurors instruction sheet. (A good manual is The Juror's Handbook, available from your local bar association.
- b. Jurors should keep notes during trial on individual witness testimony.

Witness

- a. Read witness instruction handout
- b. Witness should group together and simulate direct and cross examinations with each other.

4. Teacher's Role During the Game

- a. Teacher should act as facilitator, and not take a direct role.
- b. Teacher can assist judge in making rulings on objections, but should avoid making decisions.
- c. Should clarify questions, and point out points of law.

5. Activities After the Game

- a. Question participants about their roles: Were they nervous? Did they feel prepared?
- b. Questions jurors as to what went on during deliberation. Ask for reasons as to why they decided on the verdict? Was it unanimous? Why was there dissent?
- c. Quiz students on trial procedure.

VOCABULARY:

bailiff
cross examination
custody
defendant
deliberation
direct examination
indictment
judge
leading question
penal code
prosecutor
summons
testimony

MATERIALS GUIDE

KEY: (J) Judge, (DEF) Defense Attorneys, (DA) District Attorneys, (JRS) Jurors, (PW) Prosecution Witnesses, (DW) Defense Witnesses, (CL) Class Set.

	HANDOUT	#/PGS.	WHO RECEIVES HANDOUT
1.	Introduction to Law Mock Trial Outline of Mock Trial Preparation	2	CL
2.	Simplified Rules of Evidence	2	CL
3.	Overview of Case	1	CL
4.	Roles	1	CL
5.	Instructions to Jury Before the Trial by the Judge	1	J
6.	General Report	1	J, DEF, DA
7.	Indictments	3	J, DEF, DA, JR
8.	New York State Penal Code	2	J, DEF, DA
9.	Exerpts from People Vs. Shivers	1	J, DEF, DA
10.	Prosecution Witness Testimony	2	J, DEF, DA, PW
11.	Defense Witness Testimony	3	J, DEF, DW
12.	Role of the Defense Attorney	1	DEF
13.	Instruction to Jurors	1	J, JRS
14.	Instructions to Witnesses	1	PW, DW

INTRODUCTION TO LAW MOCK TRIAL

A. Outline of Mock Trial Preparation

1. Layout of Classroom

JUDGE

BAILIFF WITNESS

DEFENSE PROSECUTION PLAINTIFF JURY BOX

AUDIENCE AUDIENCE

2. Participants
   - (a) Judge (could be a visitor to class with legal experience)
   - (b) Prosecutor (one or more) or plaintiff's attorney(s) for a civil case
   - (c) Defense attorney(s)
   - (d) Witnesses for the prosecution or plaintiff
   - (e) Witnesses for the defendant
   - (f) Bailiff
   - (g) Jury composed of six or twelve persons; alternates may be designated*

*The jury selection process is a fascinating one. Though not covered in any detail in Street Law, the class can learn more about it by playing the JURY GAME (a role-playing simulation) available from Social Studies School Services.

3. Beginning the Trial
   - (a) Bailiff enters the room and calls out: "All rise. The Court of ____________ is now in session, the Honorable Judge ____________ is presiding."
   - (b) Judge asks the bailiff to call the day's calendar, at which point the bailiff says, "Your Honor, today's case is ____________________ vs. ____________________."
   - (c) Judge asks if each attorney is ready.

4. The Trial
   - (a) The Opening Statement: the prosecution or plaintiff's attorney explains to the trier of facts, either the jury or the judge in the case of a non-jury trial, the evidence to be presented as proof of the allegations in the indictment (criminal) or complaint (civil).
   - (b) Call Witnesses: each mock trial in this manual contains two witness statements for each side; more can easily be added. The witness statements serve merely as a point of departure for the witness. Witnesses should be well acquainted with their statements but should not read the statements in answer to questions while on the stand. Witnesses may testify to additional facts which logically follow form their statements but should not contradict the given facts or statements. Before the trial each side should practice examiniation of its own witnesses, and attorneys should write out the questions they intend to ask. (See section on next page on direct and cross examination.)

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c. Direct Examination: when the prosecution or plaintiff questions the witnesses he calls (or the defense questions the witness of the law. For example, the judge may tell the jury in a case involving larceny:

"Members of the jury, larceny is the unauthorized taking of anything of value from someone else with the intent to deprive the rightful owner of the item. If you, the Jury, decide beyond a reasonable doubt, that the defendant is the person who stole the pen from the rightful owner, you must find him guilty. If on the other hand, you have any doubt which a reasonable man might have that the defendant took the pen, you must find him innocent."

d. Jury Deliveration and Verdict: after the instructions, the jury leaves the room to deliberate.. In most states a unanimous decision is required one way or the other or a hung jury occurs. When there is a hung jury, the case may be re-tried before a new jury. After the jury returns, the jury foreman hands the judge a slip of paper with their decision and the judge announces the decision aloud in open court. In an actual trial, a guilty defendant in a ciminal case would be scheduled to return to court at a later date for sentencing.

After all mock trials, we will discuss the proceedings. We will dicuss such questions as:

1. Were the proceedings used fair to both parties?
2. Did either side forget to introduce any important evidence?
3. Could either side have been more successful in cross-examining (i.e.: impeaching the credibility the opponent's witnesses)?
4. Was the verdict a fair one?

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(h) Jury Deliberation and Verdict: after the instructions, the jury leaves the room to deliberate. In most states a unanimous decision is required one way or the other or a hung jury occurs. When there is a hung jury, the case may be re-tried before a new jury. After the jury returns, the jury foreman hands the judge a slip of paper with their decision and the judge announces the decision aloud in open court. In an actual trial, a guilty defendant in a criminal case would be scheduled to return to court at a later date for sentencing.

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4. Was the verdict a fair one?

MOCK TRIAL
SIMPLIFIED RULES OF EVIDENCE

In American courtrooms, elaborate rules are used to regulate the admission of evidence. These rules are designed to ensure that both parties receive a fair hearing and to exclude evidence which is irrelevant, untrustworthy, or unduly prejudicial. For purposes of a mock trial, the rules of evidence should be greatly simplified. The following rules will be applied to mock trials in Street Law.

1. FORM OF QUESTIONS: Leading questions are permitted during cross examination but not during direct examination. A leading question is one that suggests the answer desired by the person asking the question. Direct questions are generally phrased to evoke a narrative answer. Example of a direct question: Mr. Bryant, can you please tell us what happened to you on the night of July 23? Example of a leading question: Mr. Hayes, isn't true that you were drinking on the night of July 23?

2. WITNESS OPINIONS: As a general rule, witnesses may not give their opinions. They should confine their testimony to matters of personal knowledge (ie: what they, did, saw, heard, smelled, etc.). However, a witness who has special knowledge or experience in a certain field may be qualified an "expert witness." An expert witness is allowed to express an opinion about his/her area of expertise.

3. HEARSAY: Hearsay is an out of court statement offered to prove the truth of what is asserted in the statement. For example, suppose a witness says, "I heard that Darryl Bryant has a criminal record." Such statements as, "I was told....," "I heard ....," "I was informed...," are other examples of hearsay statements. As a general rule, hearsay is not permitted as evidence in a trial. However, there are some acceptions.

4. RELEVANCY: Only relevant testimony and evidence may be presented. Irrelevant evidence is that which has nothing to do with the issues in the case. For example, to ask a witness to an alleged crime if he has read good books lately, would obviously disclose facts worthless for a jury or a judge to consider.

5. INTRODUCTION OF PHYSICAL EVIDENCE: If there is any physical evidence (eg, documents, photographs, etc.) which either side wishes introduced at a trial, this may done by:
   - -Asking the judge for permission to have marked for identification (eg, "Your Honor, I ask that this letter be marked for identification as Defendant's Exhibit A.")

   - -Showing the item to the other side to give them the opportunity to make objections.

   - -Asking the witness on the stand to identify the item (eg "Mr. Kay, I show you what has been marked Defendant's Exhibit A. Could you please tell us what it is?")

   - -Moving the item into evidence (eg "Your Honor, I offer this letter for admission into evidence.")

6. IMPEACHMENT: The witness statements provided with the mock trials should be considered sworn statements of the witness made prior to the trial. Student witnesses should be familiar enough with the statement to testify without reading it. Student testimony is not allowed to contradict the witness statement. If the witness' testimony does contradict the statement, the other side can impeach the witness on cross examination. This means the other side can point out the contradiction and thereby call into question the truthfulness of the witness. To do this, the side wishing to impeach the witness should:

-Show the witness statement to the person on the stand

- Ask, "Is this your sworn statement?"

-Have them read the portion of the statement which contradicts their testimony.

OVERVIEW OF CASE

On May 19, 1982, Mr. & Mrs. Frank Smith were engaged in an argument at or about 7:00 p.m. in their apartment at 1 Tompkins Street in Cortland. This argument ensued from Mr. Smith's discovery earlier of someone whom he believed to be a strange man with his wife in the kitchen of their apartment. The argument, which had become extremely intense, prompted a neighbor, Richard Johnson, to telephone the police. Upon arriving at the scene, the police observed Mrs. Smith say that she was, "so mad, (she) could kill (him)." The police then ordered Mr. Smith to leave the apartment; he quickly complied with their orders but said that he would, "get Mrs. Smith for this." Later that night, after having a few drinks with John Edwards, his friend, Mr. Smith returned to the apartment with his friend at or about 12:15 a.m. At 12:30 a.m., Jean Fredrickson, a lady who lives in the apartment below the Smith's, thought she heard a disturbance upstairs and called the police. When they arrived at 1 Tompkins Street, the police entered the Smith apartment and found two men laying on the floor of the living room. They also found Mrs. Smith in the bedroom crying. She has been indicted on two counts of murder in the second degree and one count of assault in the first degree in connection with the death of Frank Smith and the beating of Mr. John Edwards.

ROLES---MOCK TRIAL MURDER

STATE v ELEANOR SMITH

Class__________

JUDGE______________________________

COURT RECORDER______________________________

BAILIFF______________________________

2 PROSECUTING ATTORNEYS 1.______________________________

2.______________________________

PROSECUTION WITNESSES:

1. John L. Edwards (friend)____________________
2. Sgt. Joseph Garrison____________________
3. Officer Harry B. James____________________
4. Mrs. Jean P. Fredrickson (Apt. Dweller)____________________

2 DEFENSE ATTORNEYS 1.______________________________

2.______________________________

DEFENSE WITNESSES:

1. Eleanor Ann Smith (Defendant)____________________
2. Mary B. Davis (Marriage Counselor)____________________
3. William D. Shivers (Plumber)____________________
4. RichardF. Johnson (Apt. Dweller)____________________

JURY FORMAN____________________ 7.____________________

Jury: 2.____________________ 8.____________________

3.____________________ 9.____________________

4.____________________ 10.____________________

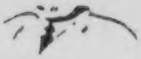
5.____________________ 11.____________________

6.____________________ 12.____________________

****

ALTERNATES 1.____________________ 2.____________________

128 135



INSTRUCTIONS TO THE JURY BEFORE THE TRIAL BY THE JUDGE

"LADIES AND GENTLEMEN OF THE JURY: Today you are about to participate as u[illegible]s in a trial that involves the defendant, (s)____________________

____

ho is/are accused of committing the crimes of ______________________

____.

he function of serving on a jury in a trial of one of your fellow citizens s a very important civic duty. The Clerk will now swear you in as a juror n this trial. Will you stand please and raise your right hand! ("Do you wear to serve as a juror to the best of your ability, honestly and consientiously, so help you God?") Be seated!

"NOW that you have been sworn in let me remind you of the serious nature f your duties as a juror in this trial. It is important that you listen ttentively throughout the course of the trial, taking notes if you wish, so hat you may decide on the credibility of the testimony of each witness, aking judgements as to what the truth is if there is a conflict between wit-esses. At the end of the trial, I'll clarify the law for you as it applies o this case to help you reach you decision. We are now about to begin this :ase by listening to the opening statements of each team of lawyers. An open-n[illegible]tatement is kind of a blueprint of the case as the lawyers will present t, so listen carefully to each side, as this should be quite helpful in mproving your understanding of this case. Do you have any questions before e begin?"

CHARGE TO THE JURY BY THE JUDGE

"LADIES AND GENTLEMEN OF THE JURY: You have heard the facts presented in his case and now it is time for you to make your decisions. There are two :ecisions which we now ask you to make.

First, you must determine if the accused is guilty of the crimes of

__________________, __________________, __________________.

:nd you must establish this guilt beyond a reasonable doubt.

__________________ is defined as ______________________________
Crime

____

____

__________________ is defined as ______________________________
Crime

____

____

BEST COPY AVAILABLE

HIS BOX FOR OFFICE USE ONLY
OTAL XEROX COPIES TO BE MADE →
NEWS 3 CARDS - REVIEW
_ TAC UNIT
_ EVIDENCE RM.

STATUS
☐ UNFOUNDED
☐ ADMIN. CLOSING
☐ NOT CLEARED

CLEARED BY
☐ ARREST
☐ NO PROSECUTION
☐ NO ARREST
☐ WARRANT ADVISED

FOLLOW-UP
☐ PATROL
☐ FILE
☐ TRAFFIC
☐ C.I.S.

T.T. NO.

VIEWER RANK

1. VICTIM'S NAME (LAST, FIRST, MIDDLE) LIST OTHER VICTIMS IN BOX 32: Smith, Frank
2. C.R. NO. (ORIGINAL ONLY)
3. VICTIM'S ADDRESS (HOUSE NO., STREET NAME, CITY): 1 Tompkins Street, Cortland
4. RES. PHONE: 753-3456
5. VICTIM'S PLACE OF EMPLOYMENT OR SCHOOL: Sally's Diner, Groton Ave., CITY: Cortland
6. BUS. PHONE: 756-00
7. VICTIM'S SEX-RACE-AGE: M - W - 32
8. LOCATION OF INCIDENT (HOUSE NO.-STREET): 1 Tompkins Street
9. OFFENSE (FOR INVEST. OFFICER): Murder-2nd
10. CLASSIFICATION (FOR REVIEW OFFICER): -
11. DATE OF OFFENSE: 5/20/82
12. TIME OF OFFENSE: @ 12:30 a.m.
13. DATE REPORT TAKEN: 5/20/82
14. TIME REPORT TAKEN: 1:10 a.m.
15. TYPE OF PROPERTY TAKEN: --
16. VAL. PROP. TAKEN: $ -
17. WEAPON, INSTRUMENT OR FORCE USED: wooden club or stick
18. PROP. INV. NO.: -
. METHOD USED TO COMMIT CRIME (M.O.): striking victim repeatedly
20. TYPE OF PREMISES WHERE OCCURRED (CHECK ONE BOX AND DESCRIBE): ☐ BUS. ☒ RES. ☐ OTHER
. WHERE PREMISES ENTERED: front door
22. EXACT LOCATION OF PROPERTY OR VICTIM (DESCRIBE): living room of apartment
. VICTIM HOSPITALIZED ☐ YES ☒ NO
WHERE:
24. NATURE OF INJURIES: severe head injuries
. DATE PRONOUNCED: 5/20/82
26. TIME PRONOUNCED: 1:15 a.m.
27. DOCTOR WHO PRONOUNCED: Dr. D. Jones
28. MEDICAL EXAMINER NOTIFIED ☒ YES ☐ NO
NAME: Dr. D. Jones
. TRADEMARK OF SUSPECT/S (ACTION OR CONVERSATION): N/A
30. VEH. USED BY SUSPECT/S. PLATE NO.-YR.-MAKE-BODY-MODEL-COLOR/S: N/A
. IDENTIFY SUSPECT BY NUMBER (NAME, ADDRESS, SEX, RACE, AGE, HT., WT., HAIR, EYES, COMPLEXION, CLOTHING, IDENTIFYING CHARACTERISTICS)
1 Mrs. Eleanor Ann Smith, 1 Tompkins Street, Cortland, N.Y. F/W/5'9"
1 -

32. ENTER THE APPROPRIATE LETTER CODE FOR EACH PERSON YOU LIST BELOW
R-PERSON REPORTING CRIME
P-PARENT OR GUARDIAN
W-WITNESS
V-VICTIM (OTHER THAN IN BLOCK #1) IF YOU CODE V ALSO SHOW SEX, RACE, AGE.

ODE	NAME	RESIDENCE (HOUSE NO.-STREET NAME, CITY)	RES. PHONE	BUS. PHONE
R	Jean P. Fredrickson	1 Tompkins St., Cortland	-	-

33. NO. PERS. ARR.: 01

34. NARRATIVE: ENTER APPROPRIATE CODE FOR FOLLOWING ITEMS IN ITEM BOX →
(1) IDENTIFY ADDITIONAL SUSPECTS
(2) DESCRIBE PHYSICAL EVIDENCE, LOCATION FOUND AND DISPOSITION
(3) SUMMARIZE DETAILS OF INCIDENT
(4) MISCELLANEOUS ACCIDENT INFORMATION
(5) DESCRIPTION OF MISSING PERSONS
(6) SUICIDE-DOCTOR'S NAME, APPARENT CAUSE, DISPOSITION OF BODY

EM #

3 Officer entered dwelling through the door of the living room and discovered two men laying on the floor; discovered Mrs. Smith in the bedroom; asked her questions concerning the crime (with gun drawn); finished on-the-scene investigation and then processed Mrs. Smith at Police Headquarters.

. NAME OF OTHER OFFICER/DETECTIVE ASSISTING: -
36. TECHNICIAN'S NAME IF CALLED, IF NOT, GIVE REASON: Not Available
WHERE REPORT WAS TAKEN: Tompkins Street
38. REPORTING OFFICER IBM# CAR ASSIGNED CAR TERRITORY
39. SUPERVISOR APPROVING RANK

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CORTLAND

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,
-against-
ELEANOR ANN SMITH,
Defendant.

INDICTMENT NO. 82-1

COUNT ONE

The Grand Jury of the County of Cortland accuses Eleanor Ann Smith of the offense of MURDER IN THE SECOND DEGREE, as defined in Penal Law Section 125.25, subdivision 1, committed in the County of Cortland, State of New York, on or about May 20, 1982, as follows:

The said Eleanor Ann Smith, with intent to cause the death of another person, struck Frank Smith about the head and body with a wooden club or stick and thereby inflicted a number of wounds upon the said Frank Smith who died of said wounds.

COUNT TWO

The Grand Jury of the County of Cortland accuses Eleanor Ann Smith of the offense of MURDER IN THE SECOND DEGREE, as defined in Penal Law Section 125.25, subdivision 2, committed in the County of Cortland, State of New York, on or about May 20, 1982, as follows:

The said Eleanor Ann Smith, evincing a depraved indifference to human life and recklessly using a wooden stick or club, struck Frank Smith about the head and body with such force and magnitude as to cause multiple head wounds to the said Frank Smith, in particular, a fractured skull and destruction of part of the brain, which created a grave risk of death and thereby causing the death of the said Frank Smith.

COUNT THREE

The Grand Jury of the County of Cortland accuses Eleanor Ann Smith of the offense of ASSAULT IN THE FIRST DEGREE, as defined in Penal Law, Section 120.10, subdivision 3, committed in the County of Cortland, State of New York, on or about May 20, 1982, as follows:

The said Eleanor Ann Smith, evincing a depraved indifference to human life, recklessly engaged in conduct, creating a grave risk of death to John Edwards, particularly by striking the said John Edwards about the head and body with a wooden stick or club, thereby causing serious physical injury to the said John Edwards.

New York State Penal Code:

Section 125.25 Murder in the second degree.

A person is guilty of murder in the second degree when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person; except that in any prosecution under this subdivision, it is an affirmative defense that:

(a) The defendant acted under the influence of extreme emotional disturbance for which there was reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaugher in the first degree or any other crime; or

(b) The defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the second degree or any other crime; or

2. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person; or

3. Acting either alone or with one or more persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, sodomy in the first degree, sexual abuse in the first degree, escape in the first degree, or escape in the second degree, and in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) Had no reasonable ground to believe that any other participant was armed with such weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

Murder in the second degree is a class A-I felony.

Section 120.10 Assault in the first degree.

A person is guilty of assault in the first degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or

2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or

3. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person; or

4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom, he or another participant if there be any, causes serious physical injury to a person other than one of the participants.

Assault in the first degree is a class C felony.

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People v. Shivers, 21 N.Y. 2d 118 (1967).

"The prosecution may not use a person's statements stemming from interrogation by law enforcement officers after he has been taken into custody or otherwise deprived of his freedom in any significant way, unless the prosecution establishes that he was, before being questioned, adequately and effectively apprised, among other things, of his right to remain silent and of his right to counsel (Miranda v. Arizona, 304 U.S. 436). The defendant was deprived of his freedom in a significant way when he was questioned by the police officer at gunpoint."

PROSECUTION WITNESSES

1) John L. Edwards

2) Joseph Garrison

3) Harry James

4) Jean P. Fredrickson

Prosecution
Basic Testimony

Mr. John L. Edwards

Your name is John L. Edwards and you are 31 years of age. You have known Frank Smith for approximately five years but had never met Mrs. Smith. On May 19, 1982, you were at a local bar and had just had a few drinks, perhaps three or four beers. At or about 11:30 p.m., your friend, Frank Smith, entered the bar and sat down. He began to tell you about the problems with his wife and explained the situation which occurred earlier that evening. He said that there were a few articles that he needed from his apartment and asked if you would go with him to retrieve these items. You agreed and both went to the apartment, arriving at approximately 12:15 a.m. Mr. Smith did not turn on the light since he did not want his wife to know that he was there. You walked into the living room and knocked over a lamp. Soon afterwards, Mrs. Smith (you would guess that it was Mrs. Smith) approached Mr. Smith and asked who was there. He replied, "it's me," and suddenly she began to beat him with a stick. He fell to the floor and you then ran over to Mrs. Smith. She began hitting you and you must have been knocked unconscious. The next thing that you remember is waking up in the hospital.

You admit that it was dark in the living room and your memory concerning certain events is a bit clouded; however, you believe that this is the way everything happened.

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Prosecution
Basic Testimony

Mr. Joseph Garrison

Your name is Joseph Garrison and you are 36 years of age. You have been employed by the Cortland City Police Department for seven years as a patrolman. On the morning of May 20, 1982, at or about 12:30 in the morning, you were dispatched to 1 Tompkins Street in Cortland to handle a disturbance in one of the second floor apartments. Upon entering the apartment of Mr. & Mrs. Frank Smith, you discovered two men laying on the floor of the living room. One of the men was dead while the other was barely conscious. You then entered the bedroom with your gun drawn and observed Mrs. Smith crying. After questioning her extensively, you learned her story. After the standard on-the-scene investigation, you took Mrs. Smith to police headquarters, read her the Miranda rights, and she was processed.

Prosecution
Basic Testimony

Harry B. James

Your name is Harry B. James and you are 27 years of age. You have been employed by the Cortland City Police Department for about two years. On the night of May 19, 1982, shortly after 7:00, you were called to the Smith apartment at 1 Tompkins Street in Cortland. When you arrived, you heard Mrs. Smith say to her husband that, "(she was) so mad that she could kill (him)." After she asked you to remove Mr. Smith, you ordered him out; he quickly complied but threatened that he would, "get Mrs. Smith for this."

Prosecution
Basic Testimony

Mrs. Jean P. Fredrickson

Your name is Jean P. Fredrickson and you are 79 years of age. You have lived in your apartment at 1 Tompkins Street in Cortland for about 23 years. You knew that a young couple lived above you but you were not acquainted with them since they were very noisy and you had reported them to the management several times. On May 20, 1982 at 12:30 a.m., you heard loud noises coming from the apartment and you called the police. You would estimate that the police were summoned to the Smith apartment approximately twice every month.

DEFENSE WITNESSES

1) Eleanor Ann Smith (see People v. Shivers, 21 N.Y. 2d 188 (1967); statement inadmissible in a court of law under the exclusionary rule).

2) Mary B. Davis

3) William D. Shivers

4) Richard F. Johnson

Defense
Basic Testimony

Mrs. Eleanor Ann Smith

Your name is Eleanor Ann Smith and you are 31 years of age. You were married to your husband for ten years and you have lived in your apartment at 1 Tompkins Street in Cortland for about three years. On May 19, 1982, you discovered a leak in the sink of your kitchen. Shortly after you called the manager, a plumber arrived; your husband arrived soon after. Because of your past history of cheating, Mr. Smith, who had arrived home at 7:00 p.m., accused you of fooling around and ejected the plumber. After the plumber left, you were arguing with Mr. Smith and a neighbor called the police. You told the police to remove Mr. Smith (which they did) and you went to bed because you were extremely distressed over the situation. About 12:15 a.m., the next morning, you heard a banging noise in the living room and proceeded to investigate. Upon entering the dark living room, you heard a person say something and then a shadow moved towards you. You then struck the figure repeatedly with a stick or club that you keep for protection. Soon afterwards, another figure came towards you and you repeatedly struck this person also. Without turning on the lights, you ran into your bedroom and began to cry since you were probably in a state of shock. Later, a policeman, with his gun in hand, began to interrogate you and you were taken into police headquarters. You were not read your rights until you arrived at the police station. You have been indicted on two counts of murder in the second degree and on one count of assault in the first degree. You contend that this was self-defense and plead not-guilty to all the charges. You also claim that you did not know who was in your apartment that night. Although you did threaten your husband earlier that evening, you did not mean anything by it.

Defense
Basic Testimony

Miss Mary B. Davis

Your name is Mary B. Davis and you are 43 years of age. You are acquainted with Mr. & Mrs. Frank Smith because you were their marriage counselor in 1980, shortly after they had separated. After seeing both Mr. & Mrs. Smith, you could summarize their marriage as follows:

> The Smiths were married in 1972 and led perfectly normal lives until 1980 when Mr. Smith learned that his wife had been cheating on him. She was dissatisfied with their marriage and sought other people. Mr. Smith, since then, had become very jealous, frequently angry, and sometimes violent. Very often during their counseling sessions, the couple would begin to argue. On one occasion, you can recall Mr. Smith threatening his wife saying, "someday you'll pay for this - someday you'll pay." You warned Mrs. Smith in 1980 that she might be in a dangerous position when her husband becomes violent; however, she refused to leave him. She has been seeking your advice, secretely for the past six months.

Defense
Basic Testimony

Mr. William D. Shivers

Your name is William D. Shivers and you are 30 years of age. You have been employed as a plumber in the apartment building at 1 Tompkins Street in Cortland for about two years and three months. At or about 6:00 p.m. on the night of May 19, 1982 you received a call from the manager of the building, telling you to look into a problem at the Smith apartment on the second floor. You responded to the call and began to fix the sink in the kitchen when, about 7:00 p.m., Mr. Smith arrived home and accused you of fooling around with his wife. He began yelling at you and ejected you from the apartment. You contend that nothing went on between you and Mrs. Smith, and you don't know why he accused you of doing anything.

YOU AND THE LAW MOCK TRIAL MURDER

STATE v ELEANOR SMITH

ROLE OF THE DEFENSE ATTORNEY

Your job is to convince the jury that the accused ____________________ ____________________ is not guilty or to show that there is reasonable doubt that the accused be guilty of the crime/s of ____________________ ____________________, ____________________, ____________

You must convince the jury that:

1. The accused did not plan the crime.
2. The accused did not plan to harm anyone.

To help you in your case you will want to question your witnesses (direct examination) and to question the prosecution witnesses (later at the trial--cross examination). You must have questions ready and prepared. Also, be able to anticipate the prosecution questions and be ready to challenge their questions and statements. You may wish to try to get your client off on a lesser charge of ______________________________.

POSSIBLE DIRECT EXAMINATION QUESTIONS:

1. Why was the room dark the night of the incident?
2. Why didn't you turn the lights on when you heard voices?
3. Do you always carry a club or stick with you to bed?
4. Did you know it was your husband that came into the room?
5. Did you ever plan to kill your husband?

Be prepared in your opening statement and closing statement to explain to the jury what you plan to do and what you did do. Show that the prosecution could not prove its case of intent to rob and intent to kill. Try to convince the jury that there is reasonable doubt concerning both charges.

Be sure to look up the law in your state concerning both of the charges and the possible punishment for both.

Note: It will be assumed that the District Attorney has given the Defense copies of all police reports and pictures of the crime scene. Any weapons involving the crime have been screened by the Defense.

MOCK TRIAL

JURORS:

1. If possible, read the Juror Handbook (available from your local Bar Association) given to you during the trial preparation period.
2. You may be asked to make appropriate signs for the courtroom to identify the various participants. Do your best with your talents.
3. **Listen** actively to the speeches and testimonies of the trial; follow the directions of the Judge and make your decisions after you have carefully considered and discussed the facts presented to you.
4. Be prepared to take notes during the trial to assist in making your decision.
5. One of you will be selected to serve as Foreman of the Jury; this person will lead the discussion, take votes when necessary, and report the verdict to the Court.
6. As a jury, you will be asked to make two decisions in this case:
   (a) Determine the innocence or guilt of the accused to the charges brought against him.
   (b) Determine which team of lawyers did the best job in presenting their case.

MOCK TRIAL

WITNESSES:

1. Know the essential facts of the case and your involvement in these facts. Study your profile sheet carefully.
2. Write out questions and the answers to them that you would expect to be asked by your lawyers during the trial. **Share these with your lawyers.**
3. **You may not** lie or change the established facts of your profile role sheet. However, you may interpret, add to, or enlarge on these given facts.
4. Try to conform to and remain in the role of the person you are portraying throughout the trial. **You will be graded on this effort.**

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OBJECTIVES:

1. Students will list the various types of punishment available to the court.
2. Students will list and explain the four justifications for punishment of criminals.
3. Students will differentiate between determinate and indeterminate sentencing.
4. Given certain situation, students will develop alternative sentences for criminals.

INFORMATION FOR TEACHERS:

1. Today's jails are overcrowded. Twenty-nine states are currently under court orders to reduce overcrowding.
   - Overcrowding has led to bloody prison uprisings in Attica and New Mexico State Penitentary.
   - More suspended sentences, paroles and released prisoners have resulted. Some experts see a parallel between this and the rising crime rate.
2. Sentencing is done by a judge, or as in some states, a jury.
3. There are two types of imprisonment sentences, definite and indeterminate (see Glossary for definition).

VOCABULARY:

concurrent sentence
cumulative sentence
determinate sentencing
deterrece
fine
imprisonment
incapacitation
indeterminate sentencing
probation
rehabilitation
restitution
retribution
sentence
suspended sentence
work release

ACTIVITY A: You Be The Judge

Procedure:

1. The students handout the following possible sentences:
    a. Suspended Sentence - a sentence is given, but the convicted person is not required to serve it and is released with no conditions attached.
    b. Probation - the defendants is released to the supervision of a probation officer after agreeing to follow certain conditions, such as maintaining a job, avoiding drugs, and not traveling outside the area.
    c. Fine - The defendant must pay an amount of money set by the court.
    d. Restitution - The defendant is required to pay back or make up whatever loss or injury was incurred by the victim of the crime.
    e. Work Release - The defendant is allowed to work in the community, but is required to return to prison at night or on weekends.
    f. Imprisonment - The defendants is sentenced to a term in prison. Some states require that a definite sentence be given, in which case the judge would specify the exact number of years to be served (e.g.: two years). Some states provide for an indeterminate term, in which case the sentence is not state in a specific number of years, but as a minimum and maximum term (e.g.: not less than three years, nor more than ten years).

2. Refer back to the Initial Appearance and Bail Game. Assume that all defendants were tried and found guilty. Students should be formed in small groups.

3. Groups shall consider the information and impose a sentence in each case.

4. While student groups are conferring, write on board:
    a. retribution - punishment as revenge to pay back the criminal for his/her wrong doing.
    b. deterrence - punishment to discourage the offender from committing another crime in the future.
    c. rehabilitation - criminals can be helped to overcome the social, educational or psychological problems that caused them to commit crime.
    d. restitution - make a commited criminal pay back the crime victim in money or work.

4. After groups have had ample time to meet, ask for examples of sentencing. Ask which of the above reasons for sentencing was behind the rationale for the sentence. Encourage discussion and disagreements.

5. As a writing assignment, pick one of the cases, have the student write out the sentence to be imposed and the rationale and reasoning behind the sentence.

ACTIVITY A: Student Handout

1. Write on board or handout, the following possible sentences:

   a. Suspended Sentence - a sentence is given, but the convicted person is not required to serve it and is released with no conditions attached.
   b. Probation - the defendants is released to the supervision of a probation officer after agreeing to follow certain conditions, such as maintaining a job, avoiding drugs, and not traveling outside the area.
   c. Fine - The defendant must pay an amount of money set by the court.
   d. Restitution - The defendant is required to pay back or make up whatever loss or injury was incurred by the victim of the crime.
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ACTIVITY B: Alternative Sentencing

Procedure:

1. Across the country, trial judges feel a need for an alternative to jail or fine. Some judges think jail sentences are inappropriate for youthful offenders, shoplifters, and people who commit crimes of passion. Novel or alternative sentencing is on the rise. Consider the following:

   A 19 year old Massachusetts youth convicted of breaking and entering was ordered to help paint the victim's house.

   A 24 year old New York woman convicted of her third charge of reckless driving was ordered to spend 20 hours working in an emergency room.

   A 21 year old New York man convicted of alcohol related vehicular manslaughter was ordered to speak to student groups about his experience.

   A 24 year old circus performer was ordered to perform 50 hours of entertainment to children's groups after he attempted to tightrope walk across New York's World Trade Center Twin Towers.

2. Have students give reactions to these orally.

3. Have students consider the folowing cases and impose a sentence alternative to fine or imprisonment.

   a. An unemployed artist busted for possession of cocaine.

   b. A middle-aged attorney convicted of misappropriating $9,000 of a client's estate.

   c. A middle-aged man convicted of distributing 3,000 pornographic books.

   d. Three teenaged youths convicted of breaking windows and destroying city street signs.

   e. A basketball star convicted of DWI.

ACTIVITY B: Alternate Sentencing

1. Across the country, trial judges feel a need for an alternative to jail or fine. Some judges think jail sentences are inappropriate for youthful offenders, shoplifters, and people who commit crimes of passion. Novel or alternative sentencing is on the rise. Consider the following:

A 19 year old Massachusetts youth convicted of breaking and entering was ordered to help paint the victim's house.

A 24 year old New York woman convicted of her third charge of reckless driving was ordered to spend 20 hours working in an emergency room.

A 21 year old New York man convicted of alcohol related vehicular manslaughter was ordered to speak to student groups about his experience.

A 24 year old circus performer was ordered to perform 50 hours of entertainment to children's groups after he attempted to tightrope walk across New York's World Trade Center Twin Towers.

Read the following cases and decide an alternative sentence for each convicted person taking into consideration the information you have learned on sentencing.

a. An unemployed artist busted for possession of cocaine.

b. A middle-aged attorney convicted of misappropriating $9,000 of a client's estate.

c. A middle-aged man convicted of distributing 3,000 pornographic books.

d. Three teenaged youths convicted of breaking windows and destroying city street signs.

e. A basketball star convicted of DWI.

ACTIVITY C: Values: Prisoner Release

Procedure:

1. Students are formed in groups of 4 or 5. They are to simulate a parole board.
2. Tell the class that because of prison overcrowding and a recent high conviction rate in their district, 5 prisoners will have to be released. They are to choose from a list of current prisoners. Their choices mut be unanimous. Only unanimous choices will be released.
    a. A former Congressman convicted of taking bribes.
    b. A blind man who ran an illegal gambling operation.
    c. A man convicted of selling marijuana.
    d. A man convicted of holding up a grocery store with a water gun.
    e. A journalist imprisoned for refusing to disclose his sources in a controverted article.
    f. A man convicted of distributing materials depicting child pornography.
    g. A man convicted of attempting to sell heroin to an undercover police officer.
    h. A man convicted of alcohol related vehicular manslaughter.
3. Write student responses on board. Have students react to the choices of the other groups.

ACTIVITY C: Values: Prisoner Release - Student Handout

a. A former Congressman convicted of taking bribes.

b. A blind man who ran an illegal gambling operation.

c. A man convicted of selling marijuana.

d. A man convicted of holding up a grocery store with a water gun.

e. A journalist imprisoned for refusing to disclose his sources in a controverted article.

f. A man convicted of distributing materials depicting child pornography.

g. A man convicted of attempting to sell heroin to an undercover police officer.

h. A man convicted of alcohol related vehicular manslaughter.

OBJECTIVES:

1. Understand the differences in concept between policing and law enforcement.
2. Understand the benefits and penalties from law enforcement and policing approach by officers.
3. Understand the crime prevention capability of law enforcement officers.
4. Understand the role of prosecutor.
5. Understand the limits placed upon law enforcement officials in carrying out their duties.

INFORMATION FOR THE TEACHERS:

It is important for the student to understand the role of law enforcement in criminal justice process. Laws can only be as effective as they are enforced. Many laws are still on the book that are ineffective because they are no longer enforced or enforceable. (See What is Justice? - Activity B).

Although we use the terms policing and law enforcement interchangebly, there is a definite distinction between them. "Policing means supervision. It implies that the persons doing the policing are watch or controlling the persons and areas under supervision. When we talk about the police state, we usually are referring to a place where human rights are limited or eliminated." Understanding the Law - SRA .

Recent Supreme Court Decisions have defined the proper role of the police as law enforcement/crime prevention rather than policing the activities of the citizens.

In this section, it is necessary for the students to understand the limits under which police must operate and that they have other roles such as prevention education, investigation and recordkeeping. The role of the Federal Bureau of Inventigation in the law enforcement process is also important.

Current articles on the controversy of the role of the police should be used to develop the student's understanding of the changes taking place in the law enforcement field.

A valuable source of backgroup reading would be:

> David L. Bender and Bruno Leone, ed. Criminal Justice - Opposing Viewpoints, St. Paul, Minnesota, Greenhaven Press, 1981, 5.95

VOCABULARY:

adversary system
booked
charged
crime prevention
custody
enforcement
excessive power
exclusionory rule
force of law
harassassment
hearsay
investigation
over charging
patrol
police brutality
policing
rights of the accused
rules of evidence
selective enforcement
suspect

ACTIVITY A: Police Power

Procedure:

Comparing divergent views of the role of police and use of power.

1. Show the film: Two Cities - (London and New York)
   Order from Cortland-Madison BOCES - #832-403
   This film is a comparison of two cities and has a section on police and the use of power. Students should be alerted to pay specific attention to this part. The section on police could be rewound and shown a second time if necessary.

2. Students will brainstorm the things that they remember about the police in either city.

3. After 5 minutes have students categorize which ideas were typical of each city; or steps 2 and 3 could be combined.

4. Students will make generalizations to summarize the two lists and discuss why two such divergent concepts have emerged. Also students should discuss why the systems used in London would not be practical in New York City and vice versa.

ACTIVITY B: Case Studies on Law Enforcement

Procedure:

1. Have the students read the folowing hypothetical case studies.
2. Each student should make a judgement as to the justice of the action. Students should also be prepared to give the reasons for their choices.
3. On blackboard compile the student reactions on each case study.
4. Have students discuss each case and decide what issue is prominent in the analysis of each case.

Key:

1. probable cause
2. exclusinary rules
3. hearsay/1st hand information
4. evidence
5. Miranda Rights
6. overcharging
7. police brutality
8. selective enforcement

ACTIVITY B: Student Worksheet

1. Officer Schults observes Jose Lopez, a convicted burglar, walking around a quiet neighborhood looking suspiciously at the houses. Officer Schults detained him and searched him. Jose was carrying tools for picking locks and was arrested.

2. The Cortland Police obtain a search warrant to search a house at 93 West Main Street for a murder suspect. While searching the drawers in a bedroom dresser, they find several ounces of heroin. They arrest the owner of the house for possession of illegal drugs.

3. District Attorney Raymond Mallery calls Sam Spade to the stand to testify that he heard his wife say she saw the defendant leaving the scene of the robbery with a gun.

4. The police arrest Joan Allen for writing bad checks. They present three checks totaling $1,500 to the Judge that she wrote on a checking account that had been closed out. The jury finds her guilty after a trial.

5. Marion Bartholomew is arrested for shoplifting and is interogated by the police and store officials for several hours. She finally confesses her guilt.

6. Burt Larson is arrested by a road patrol man for D.W.I., speeding, reckless driving, driving an unlicensed vehicle, failure to keep right, and driving a vehicle with unsafe tires. Burt's lawyer, through the plea bargaining process gets all other charges dropped if Burt will plead guilty to D.W.I.

7. Police are called to the Chapin home to investigate a domestic quarrel. They find Carl Chapin and his wife Hilda in a physical conflict. The officers separate the couple, but in the process Carl gets a broken nose. Carl decides to sue the officers for excessive use of force.

8. Due to budget limitations the Police Chief has to cut down his force by two officers. He instructs his remaining officers not to investigate any complaints other than those that might involve criminal charges.

ACTIVITY C: "An Ounce of Prevention"

Procedure:

1. Write on the blackboard the old axiom: "An ounce of prevention is worth a pound of cure".
   Ask students to express what they feel is meant by the axiom. Have students relate this to law enforcement.

2. Have students list the ways that crime can be prevented. Also identify agencies which could be used to help prevent crime, e.g.: Neighborhood Watch, Guardian Angels, Safe Homes, etc.

3. Once a list is completed, students can be divided into groups and investigate one program or organization. The group will prepare either a written or an oral report on their topics.

ACTIVITY D: Field Activity

You can use this lesson in combination with a field activity in which you ride along with a law enforcement officer during his or her normal patrol. Also, you might invite a law enforcement officer to visit the class to discuss his or her work and answer some of the following questions:

1. Why did you get into police work?
2. How is your time spent? How much of it is spent solving crimes? How much of it is spent helping people with problems that don't involve crime?
3. What are the hiring requirements of your department?
4. What problems in police work worry you most?
5. What part of the job do you enjoy the most?

OBJECTIVES:

1. Students will be able to understand evolution from penal system to correctional system.
2. Students will be able to differentiate between the retribution, rehabilitation, restitution, and deterance function of the correctional system.
3. Students will be able to list and analyze the strengths and weaknesses of our correctional system.
4. Students will be able to evaluate the success of our present correctional system and discuss ways to improve it.

INFORMATION FOR THE TEACHERS:

One question we would like our students to address is: What is the purpose of a correctional system? We can trace that historically by taking note of the terms used over the years for our correctional system. At one time it was called the penal system which brings to mind the idea of punishment and penal colonies. Later it was referred to as the Prison systems which denotes punishment, but emphasizes the idea of a deterance to crime. Today it is commonly referred to as a correctional system with the idea of rehabilitation of prisoners or in today's term residents. Whether or not the system under any name has been effective in melting the goals for what it was established is very debateable.

Another idea which is emerging in the correctional system is restitution. Restitution to the victim of crime is being considered as an alternative to encarceration. A program called Client Specific Planning (C.S.P.) has been developed by National Center on Institution and Alteraction (N.C.I.A.). This program is based on individualized corrections program for each convicted person. The fundamental principles underlying C.S.P. are: (1) there have to be effective controls on the defendant; (2) there has to be significant restitution, and (3) there must be some type of punishment imposed by the court.

For further background information the teacher is urged to read the accompanying article by Jerome Miller and Herbert Hoelten entitled "There Are Alternatives" reported by permission from Update, On Law-Related Education, Fall 1982 published by the American Bar Association. For $2.50 a reprint of the Fall 1982 issue of Update is available from American Bar Association, 1155 East 60th street, Chicago, Illinois 60637. This entire issue is on the topic of prisons.

VOCABULARY:

community probation
community service
corrections
decarceration
decriminalize
deterent
halfway house
incarceration
intermitent incarceration
penal
rehabilitation
restitution
retribution
work release program

ACTIVITY A: Do We Need Prisons?

This activity involves the reading and comparison of two opposing viewpoints on the prison system. "Imprisonment Should be Eliminated" and "Prisons are Necessary". These have been reprinted by permission from Opposing Viewpoints Sources Vol. 1, published by Greenhaven Press.

Procedure:

1. Have students read the articles and complete a reaction sheet for each article. The reaction sheet is to help the student analyse and organize the information from each article.
   NOTE: A copy of the reaction sheet accompanies this activity and can be used for any reading on any topic.
2. It is helpful to take some time to define any terms the students may have found that they don't understand, ex. - excarceration, penalogical, discriminlation, etc.
3. Several different approaches can be taken at this point to discuss these opposing viewpoints.
   (a) Students can be broken into teams to prepare arguments pro and con for a class debate.
   (b) Students can be given the question, "What is more important - retribution, rehabilitation, restoration, or a deterent to crime?" They can discuss their answers using the articles as source material.
   (c) The students can write an essay on the topic: "Do We Need Prisons?" They may use information from the articles to support their positions.

ACTIVITY B: Local Alternatives

Procedure:

1. Read the article "Alternative to Prison". Have students discuss their reactions to the Bob Johnston's program. List the advantages and disadvantages of incarceration vs. decarceration.

2. Contact your local Sheriff's Department and Probation Department and get information on local program for alternative sentencing. Ask for names of individuals that would help provide information on these programs. Divide your class into groups giving each a program to investigate. Each group will present a written or oral report on this program and its success.

FURTHER ACTIVITES: See Criminal Justice: Sentencing Activites A and B

FOCUS ON PUNISHMENT

Jerome Miller and Herbert Hoelter

There Are Alternatives

Locking them up and throwing away the key isn't the only way

Criminal justice seems to have taken a sharp turn to the right in the past decade. It's common these days to hear calls for mandatory sentences, longer prison terms, re-validation of the death penalty, and sending juveniles to adult prison. In states like California it seems that every time the members of the legislature sit together they add offenses to the list calling for mandatory sanctions, and, when not doing that, lengthen the sentences—all apparently in response to citizens' demands for "get tough" measures.

With the U.S. Justice Department predicting that we will shortly average three or more executions a week, one wonders if the body politic can ever be sated with these supposedly common sense measures for dealing with crime. The violence of contemporary corrections has a way of feeding on itself, stimulating more of the same, so it is likely that sooner rather than later we will be immersed in an unproductive morass, an even more costly prison system that does little to lessen crime in the streets. Then it is likely the pendulum will swing back and rehabilitation of offenders will be the demand, with the public naively believing that outmoded approaches will do the trick and decrease crime.

The irony is that in either case, there has been little new thought in the criminal justice field. We'd see more impressive progress if the landmark recommendations made in the late 1800s by the American Correctional Congress could simply be put into effect today.

If a "balance sheet" was presented on the cost/benefit of locking up offenders as a solution to the crime problem, the tally would shock the public and might even discourage the practice. It currently costs an average of $15,000 to lock up one person for one year in this country. In many states it's as high as $25,000. In addition, it costs over $70,000 just to build *one* new prison cell. At these prices, an offender could be sent to one of the better colleges each year and have plenty of spending money left over.

Why Prisons?

And what are the benefits of locking up these offenders? The one we hear the most is incapacitation: at least the offender will not be on the streets committing a crime. The larger question, however, is at what *total* expense? Prisons certainly incapacitate for as long as the person is incarcerated. However, recent studies have shown that even incapacitation of "career" criminals will minimally effect overall crime rates, so society is incurring substantial costs with negligible benefits.

Our reliance on prisons, and the amount of resources we give that failing system, should be a national embarrassment. We currently have over 500,000 men and women in our prisons—*excluding* jails and lockups. Our country's rate of incarceration is higher than any in the western world, and exceeded only by the incarceration rates of the USSR and South Africa, hardly admirable company for an "advanced" democracy. The question must again be posed, for what purpose?

If the argument for prisons is that they help to control crime, the data speak for themselves. We have built and filled prisons at an astounding rate for the last ten years with no effect at all on crime. A prison term is *at best* an ineffective and costly way to achieve this goal.

Prisons are what John McKnight and Ivan Illich call "iatrogenic"—the apparent solution to the problem exacerbates the situation. In his book *Medical Nemesis*, Illich argues that we are a society afflicted with illness-producing medicine, stupidifying education, and criminalizing justice, and that often the helpers hurt. It is a frightening and offensive argument, but one with particular merit where prisons are concerned.

Prisons survive because most reforms in corrections have either been short-lived or off target. An enduring and growing theme is that prison is the only choice. In its rigidity and bureaucracy, prison ensures its endurance by serving both sides of the debate. Whether we wish treatment or punishment, the prison can be presented as providing either alternative. Though the equation is inevitably skewed toward punishment and retribution, the professional correctional administrator can usually give some semblance of validity to the notion of rehabilitation in prison, whether or not objective studies support that ideology.

Liberals have pressed for rehabilitation, but their approaches to reform haven't been innovative enough. They've

Paul Conklin

sometimes advocated bringing professionals into the prison. Psychiatrists, social workers, sociologists, psychologists have set up shop there, along with their tools of treatment, training and diagnosis—"transactional analysis," "positive peer culture," psychotherapy. Unfortunately, it hasn't worked. Treatment in prison is notable by its failure. Other prison programs, like those recently advocated by Chief Justice Burger in his prison reform agenda (vocational training or education, for example), have likewise had a sad and unproductive history.

Another proposed reform is to get offenders out of institutions, through "alternative" programs like halfway houses, work-release, and probation.

CASE I

The National Center for Institutions and Alternatives (NCIA) through Client Specific Planning, is coming up with alternatives tailored to the needs of individual offenders and the courts. In the boxes accompanying the article are some examples of creative alternatives.

Maria Campo, 35 years old, had pleaded guilty to two counts of fraud and two counts of passing bad checks. Ms. Campo had been purchasing new furniture for her apartment, paying with checks for which she knew she had no funds. She also had a previous conviction for forgery.

For this case, NCIA proposed a series of sentencing options which included:

Residence: Three options were proposed. To allow the court to maintain local control, NCIA arranged for placement in a county work-release center. NCIA also arranged for placement with her parents or with a work-release program in her parents' county. Placement with the parents could be in lieu of or subsequent to placement at either work-release program.

Social Restitution: Ms. Campo would serve as a volunteer child-care worker at a day-care center. She would perform 10-12 hours of long-term community service each week, for as long as the court ordered.

Employment: Employment would be secured through referrals from a local offender assistance organization.

Counseling: Psychological counseling would be provided weekly. Financial counseling would be provided through a local credit counseling agency. Ms. Campo would receive help in budget matters.

Financial Restitution: Ms. Campo would be required to pay her outstanding debts arising from her offenses. This restitution would be incorporated into her counseling program.

Community Supervision: In addition to being placed on supervised probation, Ms. Campo would be supervised by a third-party advocate. This advocate, provided through an offender assistance organization, would monitor all aspects of the implementation of this plan. The advocate would file periodic reports to the court.

Judge Stewart Williams sentenced Ms. Campo to two 20-year concurrent sentences, suspending all but 18 months. Ms. Campo was ordered into the local county work-release center. Upon release from that program, she was required to reside with her parents and complete all other components of the proposed plan. Judge Williams thanked NCIA for its efforts on behalf of Ms. Campo.

Alternatives in Action

What are the alternatives that we've provided, generally to the middle-class offender? They range from fairly restrictive work-release programs and halfway houses to the more permissive options of weekends in jail, community supervision, public service stints and restitution schemes.

Work-release programs are commonly used in American corrections, and the public is probably more familiar with this alternative than any of the others. Offenders on work-release reside at an institution but are released during the day to work at a noninstitutional job. The rules and characteristics vary from state to state; in some states an offender must find a job himself before he will be admitted to a program, but in other states a job is provided to an offender who is deemed worthy of the program. Wages vary, again, from state to state. Often if an offender earns a decent wage he must then pay a percentage back to the state department of corrections; this percentage can be anywhere between 30 and 90 percent and, ironically, amounts to an offender paying to stay in prison, since the state considers its percentage as payment for room and board.

If an offender is lucky enough, his prison sentence will be shortened by serving the end of his time in a halfway house. Here he lives with anywhere from four to 100 other residents in a less restrictive setting, and may work in the surrounding community. Halfway houses provide supervision for an offender trying to readjust to life in the community. It is possible that an offender could be sent to a halfway house in lieu of a prison stay, but this sentencing option is rarely used.

Since halfway houses are located within the community, offenders with viole[illegible] histories are usually not allowed residence in them (as is also true of work release participation). Drug and psychiatric halfway houses, however, are more likely to admit "problem" offenders since their rules are very restrictive. Generally, for the first third of their stay offenders are not allowed any visits to the community, but furloughs become more frequent as the offender undergoes more treatment. This approach to rehabilitation works best when the setting closely resembles a family, with staff showing care for individual offenders and allowing them to develop self-esteem and personal values.

Less restrictive—and much more innovative—is the weekends in jail option. An offender sentenced in this way spends from either Friday night or Saturday [illegible]rning to either Sunday night or Mon-

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Jerome Miller engineered the closing of the youth institutions in the state of Massachusetts, still the only statewide reform of its kind. Since then he has worked on the staffs of the governors of Illinois and Pennsylvania. In 1977, he founded the National Center on Institutions and Alternatives (NCIA), a non-profit organization which develops and operates alternative programs across the nation. Herbert Hoelter is the co-founder of the National Center on Institutions and Alternatives and director of the Client Specific Planning program. Prior to his work at the NCIA, he was an assistant to the Commissioner of youth services in Pennsylvania, where he worked with Jerome Miller in removing youths from adult prisons.

CASE II

In a trial by jury, John Hayes, 37 years old, was convicted of embezzling $1.1 million from the firm for which he had been financial vice-president. At his trial, he admitted to being a compulsive gambler and having lost the embezzled funds in various gambling ventures. The prosecution urged the maximum sentence of incarceration for 15 years.

As an alternative, NCIA proposed that John Hayes:

- Perform long-term community service, 10–15 hours per week, with a local gamblers' assistance center and the American Red Cross;
- Make partial financial restitution to the insurance company suffering the loss (15 percent of his annual gross income for 10 years) as well as payments to the gamblers' assistance center (as "substitute victim") and to the court;
- Participate in group and individual counseling for his gambling problem;
- Reside either at home or in a community-based halfway house;
- Maintain his current full-time employment; and
- Be placed on probation for the statutory five year limit plus submit to an additional five year "extended voluntary" supervision to permit his making more substantial, long-term financial restitution.

Judge Margaret Arnow, in her decision, relied extensively on the proposed Client Specific Plan. She imposed a 10-year sentence and suspended all but three years. In lieu of incarceration with the Department of Corrections, Mr. Hayes was ordered to report to a community-based halfway house, to perform community service with the gamblers' assistance center, to participate in counseling, and to maintain employment. Judge Arnow also placed him on five years' probation, to start upon release from the halfway house, and indicated that any gambling episode would constitute a violation of probation. As for the financial restitution, Judge Arnow urged the insurance company to pursue civil action to recover its losses.

day morning locked up, but during the rest of the week he is a community resident. The idea is that he should be punished by withholding some of his liberties, but completely pulling him out of his home is unnecessary.

Often this alternative is used in combination with another—public service work. Here the sentence calls for weekends or evenings spent volunteering in an agency or public service organization. Offenders have spent time working in nursing homes, boys' clubs, counseling agencies and any number of other settings. This option is usually reserved for misdemeanants.

The courts have also started using community supervision; offenders, in addition to having a probation officer, are placed with a third-party advocate who helps them stay on the right track. These advocates may, for example, help an offender find a job, child-care or counseling. Advocates are provided by offender assistance organizations.

One alternative currently getting a lot of public attention is financial restitution. Here an offender who is able to pay back his victim does so. Unfortunately, in the past many offenders didn't have the means to participate in this kind of plan. Currently, courts are starting to recognize the usefulness of payment schedules. Both offenders and victims can benefit when the courts allow an offender to pay his victim back on a supervised schedule.

What helps an alternative to "work," lowering recidivism, enabling offenders to function more productively and, quite possibly, ultimately affecting the level of violence which sustains the culture of crime? The ones that work are those where an offender has an advocate who works with him at least thirty hours a week, a kind of paid or volunteer buddy. In addition, there are programs that demonstrate care for the individual as well as supervising him. They are generally high risk programs willing to become involved in the Byzantine and confusing contradictions which characterize the life and perceptions of the individual offender, and programs which, because of their emphasis on the individual, do not replicate easily. The emphasis of these programs is incompatible with the "objective" responses of mandatory sentencing or the bureaucratic response of the helping social agency or program. But what about alternatives in general? Are they more successful? Are they more cost effective?

Why Alternatives Fail

The answers to these questions are mixed. The primary problem with "alternatives" is that they generally have not been tried for the population who would otherwise be in prison. The programs which work (and there are many) are reserved for populations which have the means to avoid falling into the criminal justice system abyss, generally the more articulate, interesting individuals who are able to involve friends or family in their plight—the middle-class or their mimics. In practice that means that alternative programs have actually *increased* the total number of offenders in the system. By creating dual systems—prison for "lower class" criminals, alternatives for those who rarely go to prison—we're doing nothing for most prisoners. There are isolated programs which provide the exception, such as "Client Specific Planning" (see boxes for case studies), but the norm is not to handle the "serious" offender in alternative settings. The paradox is that the diagnostic or labelling process which enables many offenders entry into alternative programs is ludicrously arbitrary.

Ronald Laing, the British psychiatrist, has commented that most diagnoses are "social prescriptions," focusing on what's best for society, not what's best for the individual. Those of us in the so-called helping professions often maintain the naive view that the diagnosis of serious offenders is a scientific exercise. At other times, when feeling less comfortable with psychiatric nomenclature or the rehabilitative ethic, we stress the legal definition of the serious or violent offender. But the most crucial aspect of this process has been neglected—namely, the bureaucratic and political considerations which call for certain prescriptions. For example, when dealing with a convicted felon, the diagnosis is more likely than not *a bureaucratic response to a political problem*. In this context, the diagnosis helps relieve strain on the system by focusing attention on an individual or class of "deviants," many or most of whom, paradoxically, are products of that very same system. The process repeats itself. Only the labels are changed to protect the guilty.

It matters little, therefore, whether the definition is one of "sinner" of the seventeenth century, "possessed" of the eigh-

(*Continued on page 64*)

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Alternatives

(*Continued from page 13*)

teenth century, "moral imbecile" of the nineteenth century, or a "constitutional psychopathic inferior" of the early twentieth century. In the 1940s the label was "psychopath"; "sociopath" in the 1950s; a person was "unresponsive to verbal conditioning" in the 1960s; and a "criminal personality" or "career criminal" in the 1970s. Through all of these labels we avoid dealing with the political and bureaucratic issues which lurk somehow below our awareness, but which might enlighten the whole process.

"Just desserts" models based in mandatory sentences are no more responsive to these issues than the indeterminate sentences based in rehabilitative ethic. As George Mead commented over 70 years ago in *The Social Settlement* "the social worker may be the sentimentalist but the legalist ends up being the ignoramus."

In order for the system to change we have to admit that the system *needs* to change. In addition, authentic alternatives, as *alternatives to prison*, have been given little opportunity to succeed. The typical state corrections budget is 95 percent locked into the prison line item. Because of a tradition of dealing with light-weight offenders unlikely to be incarcerated, alternatives are thought of as luxuries rather than necessities, superfluous rather than required. When budget cuts become necessary, "alternatives" are the first to go. Had they been true alternatives to prison, reflected in lower numbers of imprisoned inmates, this probably wouldn't be the pattern.

Any Hope Ahead?

There are a few bright spots on the horizon. The public is beginning to recognize the costs and failures of the current system. In addition, many programs are responding to the offenders who really need their help. For example, the Client Specific Planning (CSP) Program has consciously and methodically focused on offenders at the "deep end" of the system. Approximately 95 percent of our work is with felons, and 40 percent of them have committed violent crimes. We say that if a program can be successfully implemented with this population it can have a significant impact on the whole criminal system, including the treatment of lesser offenders.

Many other alternative programs are also recognizing the mandate to balance the individual needs of the offender with the political needs of the courts to impose sentences that serve justice. The fundamental principles underlying CSP are relatively simple: (1) there have to be effective controls on the defendant; (2) there has to be significant restitution; and (3) there must be some type of punishment imposed by the court. These three principles dovetail closely with the court's sentencing goals of public protection, rehabilitation, and deterrence.

The important issue is not that CSP works but rather the premises which underlie it. CSP is one means of insisting we treat offenders who are strangers the way we would deal with offenders who are relatives or friends—with caution, but with concern. It is our view that demands for justice, as well as rehabilitative or reformative needs, can be met through use of this model, *provided it remains focused on those specific offenders who would otherwise go to prison*.

The issue then, becomes not one of conservative vs. liberal approach to corrections. It is not even one of getting "tough" vs. being "permissive." Rather, it is how to establish an environment in corrections where the individual matters, and to introduce this approach to the vast mass of offenders. We are talking about establishing conditions for personal responsibility and remorse, thereby opening possibilities for personal reform and change. Until now, this has happened accidentally, if at all. Simply put, it means guaranteeing that the same degree of involvement and concern is put into planning for the average offender (who is a stranger), as we would insist upon were the offender a close friend or family member. ☐

CASE III

Dave Williams, 24 years old, pleaded guilty to "assault with intent to murder" his 19-year-old former girlfriend following the breakup of their relationship. Williams had fired several shots at the woman, wounding her in the thigh, shoulder, and buttocks. After the shooting, Williams, with his girlfriend as a captive, held police at bay for 20 minutes.

NCIA proposed the following alternative sentence:

Residence: Mr. Williams would be placed in a comprehensive community support program offering psychological counseling, vocational assistance, and training toward independent living. Mr. Williams would eventually move into a supervised apartment.

Community Service: Mr. Williams would volunteer 10-12 hours per week in a long-term community service at a local hospital.

Employment: With the help of an offender's assistance organization, he would seek full-time employment.

Psychiatric Counseling: Mr. Williams would undergo a psychiatric evaluation and enter into continuing therapy at a local, university-affiliated, psychiatric clinic.

Special Research Project: In response to the particular offense, Mr. Williams would be required to read and report on a book dealing with battered women.

Special Condition: Mr. Williams would be prohibited from any contact with the victim of his offense.

Probation/Community Supervision: Mr. Williams would be placed on probation. Additionally, to assist with the coordination of his plan, a third-party advocate from an offender aid organization would voluntarily provide supervision. NCIA also indicated to the court that Mr. Williams had scored 10 on the U.S. Parole Commission Saliency Factor Score System, making him a good probation candidate.

Judge Henry Jones imposed an 18-year sentence, suspending it all so Mr. Williams could participate in the Client Specific Plan with five years' probation and a three-year community service order.

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"It is time to finally toll the bell on ncarceration as a rehabilitation vehicle, to bite the penological bullet, and embark upon a program of excarceration."

viewpoint 88

Imprisonment Should Be Eliminated

Prison Research Education Project

It is time to debate fundamentals: namely whether, within the frame of reference of historical experience, sound economics, basic principles of human psychology, and the dictates of the administration of justice, it is more sensible and practicable to improve our correctional institutions to the point where they can actually achieve the rehabilitation they are set up to achieve; or rather, to finally toll the bell on incarceration s a rehabilitation vehicle, to bite the penological bullet, d embark upon a program of "excarceration"....

If the approach adopted at this juncture of history (*after* Attica, the Tombs, Rahway, San Quentin, Soledad, and even rumblings at quieter models such as Somers) continues in the direction of "improving conditions" and "funding more and better programs"—we shall have learned nothing from history and placed ourselves on a clear course to repeat it, at even greater human cost.

On the other hand, if we are prepared to critically appraise the corrections system, accepting nothing as axiomatic and questioning everything regardless of sacrosanctity, the starting point must be the technique of incarceration itself. The argument here is that it is time to stop worshipping the Golden Calf of caging and/or isolating the social offender, and, worse still, fattening it with precious and scarce tax dollars.

Excarceration

Instead, the major premise must be excarceration, with a massive increase in the use of probation coupled with community based and community-oriented alternatives, and linked closely in turn to restitution to victims. Such a program, while not ignoring the demands of society for crime deterrence and even punishment, would place for heavier emphasis on fines, on social stigma, confinement o a residence except during working hours, and similar on-incarceration alternatives.

Without attempting to offer a detailed blueprint on the "new corrections," with all materials and specifications laid out, the author would suggest four main routes for reaching the goal of excarceration: (1) decriminalization, (2) democratization of pretrial release, (3) adoption of standards and procedures for sentencing, and (4) emphasis upon restitution for victims.

—Emanuel Margolis, *No More Prison Reform!*

Imprisonment should be a last resort. The presumption should be against its use. Before any offender is incarcerated, the prosecution should bear the burden of proving in an evidentiary hearing that no acceptable alternative exists. An equal burden should be required for the denial or revocation of "good time," probation, and parole, which really are only other ways of imposing imprisonment.

We should further reduce our excessive reliance on prisons by making extensive use of alternatives to imprisonment, such as fines, restitution, and other probationary methods, which could at least as effectively meet society's need for legal sanctions. However, all such alternatives must be made available to all people who have committed similar offenses, so as not to become a means for the more affluent to buy their way out of prison. And, where some kind of confinement seems necessary, halfway houses, community centers, group homes, intermittent sentences, and other methods of keeping offenders within the community should be preferred to prison.

Ideas for moving away from the notion of imprisonment are not new—they have been advocated for generations, but seldom acted upon. For decades we have been aware that decriminalizing harmless behavior could save untold numbers of individuals from the cage. Community dispute and mediation processes have long been proposed to keep the settlement of specific complaints and conflicts outside the criminal (in)justice systems. Also, abolishing the money bail system and thereby eliminating almost all pretrial detention, is another excarcerating idea that is hardly new. In order to implement such proposals, it is essential that abolitionists organize constituencies around these excarceration issues.

Task Force Reports

Recently, two prestigious task forces, after intensive research into the failure of prisons and the validity of alternatives, proposed a series of excarcerating procedures. While not yet implemented, both reports are notable for their scope and conclusions and can be useful to abolitionists in excarceration campaigns.

The National Advisory Commission on Criminal Justice Standards and Goals, in their report *Corrections*, recommends that each "correctional" system begin immediately to develop a systematic plan with time-table and scheme for implementing a range of alternatives to institutionalization. The Commission's guiding principles advocate the most limited possible use of institutionalization: (1) no individual who does not absolutely require institutionalization for the protection of others should be confined, and (2) no individual should be subjected to more supervision or control than s/he requires.

After more than a year's intensive research and study, in 1972 *The Final Report to the Governor of the Citizen's Study Committee on Offender Rehabilitation*, "unequivocally established as its most fundamental priority the replacement of Wisconsin's existing institutionalized corrections system with a community based, noninstitutional system." The Study Committee comprised of a broad range of individuals including ex-prisoners, placed particular emphasis on community services suited to the individual needs of the lawbreaker. But, the primary value of the report in addition to its scope and detailed proposals, is its advocacy of *community* control of programs rather than control by the Division of "Corrections."

Interim Strategies

Abolitionists could spin off a long list of reasons why such reports could be regarded with suspicion: (1) Many of those who produce these reports are in the forefront of the reformist movement. They represent prevailing economic and political power arrangements. (2) Instituting reforms of decriminalization, modernization of the courts and community alternatives to incarceration still permits the legal and penal apparatus to focus on the same powerless class as before. (3) What passes for liberal and humane improvements of the system simultaneously contribute to the efficiency and acceptability of the control apparatus in a less crude form.

While critical political analysis is crucial to all social change work, it should not limit the use of materials or programs that can correctly be perceived as vehicles to move us *toward* abolition. Regardless of the systems-connections of the authors, portions of the above reports serve as valuable *interim* proposals, useful in beginning the move from incarceration to excarceration. Belief in the long range goal of abolition, should not detract from shorter range strategies that provide the potential for *gradually* diminishing the role of prisons. Some reformist options can be utilized as interim abolition strategies *as long as we consistently move toward our long range goals.*

If the proposed options prove inadequate to the need, we can recast them, discard them or create new alternatives. The recommendations are not envisioned as ends in themselves. They are *part* of a continuum strategy—a social change process which moves us both closer to abolition and at the same time brings desired relief to those who would otherwise be caged.

Abolitionists must remember that many forms of excarceration are still considered punishment by the affected individuals—though a much lesser punishment than that of prison. We hope that gradual reductions in the degree and type of punishments can, in the long range, lead toward the total elimination of sanctions.

Excarceration—keeping all people out of cages—is our primary goal. As we examine caging alternatives, we can test out consistency with abolition principles and ideology by again asking ourselves:

- Do we improve or legitimize the prevailing system by the actions we advocate?
- Does our advocacy reflect and support the values of economic and social justice, concern and empowerment for all people and reconciliation of the community?
- Do our excarceration strategies move us closer to our long range goal of abolition?

Modes of excarceration

We cite eight specific modes of excarceration, some for the long range and others which could immediately reduce dependency on prisons:

- *Decriminalizing* numerous kinds of behavior which should not be within the province of the law.
- *Abolishing the system of bail* and with it pretrial detention for all but the few who, with predetermined criteria, could be conceived as a threat to public safety.
- *Establishing community dispute and mediation centers* which divert cases from the criminal (in)justice systems and train community members in the art of mediation.
- *Restitution*, creating community mechanisms for assuring payment or services by the wrongdoer directly to the wronged.
- *Fines*, adjusting the amount to the financial status of the wrongdoer.
- *Suspended sentences* and forms of conditional release to be utilized in far more cases than are presently receiving this disposition.
- *Community probation* programs, utilizing community services and support as an alternative to today's probation programs.
- *Alternative sentencing*, fixed by law to eliminate disparity and guarantee fairness and equity.

The Prison Research Education Action Project designs and distributes education/action tools for use by those working for prison abolition.

> *"Until feasible and effective alternatives which meet all the needs of crime control and which respect all its safeguards are developed, then to simply postulate decarceration is not only foolish but dangerous."*

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Prisons Are Necessary

Donald J. Newman

Crime, particularly traditional street-crime, is today considered a domestic threat of the first order. We have always been plagued with crime, of course, but rarely has fear for life and limb been so pervasive or given such high priority as a cultural problem. In 1965, President Johnson declared war on crime, pledging to "banish" it from our society. President Nixon—ironically it turns out—swept to office on a law and order plank. The federal government has begun to pour monies into state and local crime control and prevention programs and various commissions have issued reports and recommendations on how best to curb and control the problem.

While there is, and has long been, voices espousing major cultural changes to correct the underlying cause of crime, in general, the result of our crime war has been new demands on the agencies of crime control—the police, courts, and corrections—for greater effectiveness. Control is the cry; prevention can evidently wait for more settled times. The response to demands to "do something" about crime can only be called mixed. Initially, as always, hardware was given priority. Police departments were retooled, prisons computerized, courts expanded and all-in-all a literal war on crime broke out. Commissions were formed, including two major Presidential Crime Commissions, and various professional groups met and issued crime control standards and goals. Penal codes were revised and manpower recruitment became a big issue. Colleges and universities responded by creating a new field, Criminal Justice, unheard of ten years ago but now a viable program on over a thousand campuses across the nation. The Supreme Court and other appellate courts sought to curb excesses in crime control efforts and were accused of "handcuffing" the police and delaying justice. Early on there was general insistence on effectiveness and efficiency in crime control; due process and other Constitutional protections were viewed as "technicalities" hindering the banishment of crime.

There was, and continues to be, a backlash to relatively unfettered shoot 'em up crime control. The emergence of crime as a high priority domestic issue occurred at the same time and in societal context with the civil rights movement, with the political awakening of the poor and with widespread disenchantment with governmental intervention in foreign affairs, especially the Vietnam War. The *Zeitgeist* was a mixture of demands for law and order set against a public-government credibility gap and very strong insistence on rights, opportunities, and on fair and humane treatment by the poor and by racial and ethnic minorities. It became quickly obvious that the impoverished and downtrodden were the primary targets of crime control processing and rarely in a position to do the processing. Eventually both the hot eyes of those affected by crime control and the cold eyes of scholars turned to critical examination of our methods of law enforcement. To almost no one's surprise, our system of criminal justice was found to be ineffective and inequitable at least and perhaps so brutalizing and counterproductive as to be unfit for our ideology in our time.

Reaction to disenchantment with crime control efforts has taken various forms. The most extreme is angry rhetoric calling not for the abolition of crime but the abolition of the criminal justice system. In effect, this is a new form of nihilism advocating the total destruction of what is perceived to be a racist, totalitarian system for the preservation of the status quo at the expense of the "people." In contrast, the mildest strategy is essentially patchwork: attract better police, reduce delay in the courts, increase rehabilitative efforts in prisons. Most of the hard realities of our societal response to crime are avoided or dismissed as irrelevant at these extremes.

A much more pervasive, middle-of-the road stance is popular today. Its primary allegiance is toward long-range crime prevention in the classical manner, but with the immediate control of crime reluctantly conceded to be necessary. However, our present techniques of apprehending and convicting violators and putting them in prison is viewed as largely irrational, dysfunctional, endless and, perhaps, hopeless. Police are needed for a dangerous few and so are prisons or some variation in maximum restraint but the routine formal processing of the great bulk of violators as is presently done is really unnecessary. We as a people need to find and implement more rational, more humane and more effective alternatives. In general, this attack is characterized by word slogans beginning with "d"—deemphasize, divert, decriminalize, decarcerate.

Decriminalization

This approach starts with legislative reform. Criminal behavior, after all, is a matter of definition and any reform must begin at the beginning. The prevailing view is that we have too many crimes, that we foolishly expend our criminal justice resources in an attempt to enforce morality, a task both unwise and impossible. Why should marijuana be outlawed? What of gambling, prostitution and other victimless crimes? Can't we, by removing such conduct from criminal codes, reduce our crime control efforts to manageable size and really begin to focus on serious law violation?

Decriminalization, even if wildly successful, will admittedly touch only the fringes of the crime problem, leaving murder, mayhem and stick-ups on square one. Interestingly, many spokesmen for decriminalization simultaneously call for criminalization of other, emerging problems, like pollution, which only recently have been perceived as a threat to our way of life.

Diversion and Destigmatization

Apart from reducing the number and type of criminal statutes, there is major emphasis on development and use of alternatives to criminal justice processing. "Diversion" is the watchword and it applies across the system from police intake to parole. Indeed, a number of observers resting their case on labelling theory research believe that full scale processing of a person from the status of suspect, through defendant, to offender, inmate and parolee, is rarely in his best interest or for that matter in the long-range interest of the social order. Having been arrested, charged, convicted, sentenced, incarcerated and released it is sheer luck if he emerges from the process no worse, no more damaged or dangerous, than he entered. Given all this, emphasis should be placed on using the criminal process reluctantly and rarely but if necessarily invoked, then the person should be diverted from formal processing as soon as possible. Alternatives are needed and here, of course, is the rub. Are there indeed alternatives existing at present, or possible to develop, that will be more effective and at least as fitting to our ideology as full criminal justice processing?

Decarceration

Another word slogan, fully as popular as "decriminalization" has become part of this strategy. This is "decarceration," meaning, of course, the phasing-out of prisons as a method for dealing with serious criminal offenders. Actually, decarceration encompasses two quite different options. The first, and most complete, calls for closing all maximum security prisons in favor of community supervision with only limited, short-term diagnostic lock-up of a few persistent or dangerous violators. These periods of brief incarceration would be effected in small community-based residential diagnostic and treatment facilities, lasting only until viable "reintegrative" plans can be worked out so that offenders can effectively be returned to unconfined but perhaps supervised community living. Chronically assultive or otherwise dangerous offenders and those exhibiting bizarre conduct would be diverted to mental health facilities for more intensive therapy. In general, however, the maximum security prison would become a thing of the past, neither necessary nor desirable in this day and age.

> *"Are there indeed alternatives existing at present, or possible to develop that will be more effective and...as fitting to our ideology as full criminal justice processing?"*

A second variation on the decarceration theme rests on a belief that maximum security prisons are unnecessary and dysfunctional for the vast majority of offenders but may be necessary for a "few" very dangerous violators. How few is usually determined by asking wardens, correctional administrators and parole board members how many persons presently incarcerated really need the walls, bars and gun towers. Answers vary from one to twenty-five percent but it is believed some hard-core residue will remain after most prisoners are diverted to community alternatives. In effect, this is not truly decarceration, but merely a shrinkage of incarceration. A reduction in prisons to an "irreducible minimum."

Both decarceration options have in common dislike, distrust and disenchantment with prisons as they have been and are used. Both are predicated on belief in feasible and proper alternative methods of intervention, control and treatment. Yet the options are quite distinct in outcome for the first involves total abolition but the second leads to the creation of "maxi-maxi" prisons, smaller perhaps but otherwise not much different than now exist. As can be easily seen, this divergence is not simply one of degree but of kind. The two views, attracting quite different proponents, rest on differential beliefs about the cause and cure of criminal behavior, about the role of incarceration in our society and indeed about the basic purposes of our criminal justice system.

Decarceration, total or in significant part, is widely espoused today. There really are no informed spokesmen defending prisons as they are currently used or calling for expansion of incarceration. Yet even rudimentary attempts to decarcerate have not met with success. Some [illegible] the reasons for this are political—and this is not meant derogatively for crime control is properly a concern of our political system—and some are bureaucratic involving entrenched resistance to abandoning capital investments and to ending the economic reliance of many small communities on prisons.

Obstacles to Decarceration

Apart from entrenched political and economic advantage there are a number of additional obstacles to decarceration which must be directly confronted if this dream is to come about. Some may be overcome but others, I am convinced, are insurmountable in the foreseeable future leaving the whole issue of incarceration one of improvement rather than abandonment. These obstacles include:

1 *Tradition.* We have had prisons for a century and a half, in fact, we invented them and the traditional ideology underlying incarceration dies slowly. Criminal justice reformers have continuously come on the hard fact that any significant change from traditional ways of doing things is difficult and excruciatingly slow even in the face of overwhelming evidence and well-phrased arguments supporting the need for change. Our criminal justice system, including prisons, is by no means always rational, waiting with bated breath for the reformer and social engineer to suggest improvements. There is much of a ceremonial and symbolic nature in most crime control efforts and these are not easily dismissed by evidence of dysfunction or even of high cost. Proponents of medium security "open" prisons have long been plagued by legislative and public resistance even with evidence of greater effectiveness at much less cost than walled institutions. Somehow, perhaps for reasons of deterrence, prisons are not supposed to be pastel colored but are expected to "look like" Gothic prototypes.

2 *Community Supervision.* The major difficulty with decarceration is less a matter of inertia than lack of really feasible and effective alternatives. In good part, prisons themselves were created as alternatives to overseas penal colonies, to community outlawry and to branding, flogging and hanging. If, in turn, they are abandoned, in part or in whole, something of value must be offered in their place. This something of value must not only offer promise of more effective rehabilitation or reintegration of offenders but must somehow meet the other purposes of incarceration, community protection, deterrence and even revenge, purposes less popular in professional circles, perhaps, but nonetheless operational.

Setting aside for a moment punitive and deterrent purposes, a question remains of whether other methods of offender intervention are available or likely to be developed. And, as a critical corollary, whether any such alternatives, even if more effective, are proper and fitting within our political ideology. In brief there are two questions: can we do it and might not the cure be worse than the disease?

> *"We have had prisons for a century and a half; in fact, we invented them and the traditional ideology underlying incarceration dies slowly."*

It is often stated that, in fact, we have had for some time a viable incarceration alternative, namely probation. The professional literature is replete with studies showing high "success" rates with probation, demonstrating its effectiveness over imprisonment and, perhaps most important, its success at far less cost than any form of incarceration. True, probation services are presently starved resulting in excessively large caseloads, some pro-forma supervision and limited counselling but this can be easily remedied. New forms of probation subsides, new experiments in team supervision, including the use of paraprofessionals, matched agent-offender caseloads, new techniques of intensive supervision and similar developments hold promise beyond our wildest dreams. Even granting all this, a nagging problem remains. The fact is that probation is not and has never been an alternative to incarceration. Instead, historically and now, probation is an *additional* form of correctional intervention allowing us to keep more persons under state control. It may be that probation has acted to keep prison populations in a more or less steady state. Incarceration has expanded to meet general population growth but has not proliferated beyond the gross national product of serious criminals. But an alternative? Never. The kinds of offenders placed on probation are not, in the main, of the same cut and jib as those for which prisons were designed and are currently used. Probation does act as a screening stage for the prisons and may, in fact, function to *increase* prison populations. Those offenders who initially appear to be good risks are tried out but, failing in the community, are moved into incarceration. Just as prisons must have within them deeper prisons—segregation—for those inmates who violate prison rules so probation relies on prisons in the background, the sword of Damocles that is ever ready and which not infrequently descends.

If by decarceration is really meant more limited and selected incarceration, the second option discussed above, then it may well be that probation can be more generally used than has been the case. Certainly there are some, perhaps many, present prison inmates who in a wider court with more adequate community resources could have been effectively released to probation. But if decarceration is intended as a total stance, or even near-total, will this work? Under even ideal conditions is it feasible to suggest community supervision, counselling and the on-street application of other treatment modalities for every persistent, professional, physically dangerous or sexually aberrant and aggressive violator now held in prisons?

3 *Community Protection: Other Alternatives* A major in fact a dominant purpose of prisons is to have and to hold. True in this day and age we hope to rehabilitate or otherwise cure or condition those prisoners held so that they return or perhaps first achieve, a law-abiding existence once the gates open. But restraint and incapacitation during sentence to protect the community—all of us—from further criminal acts is a fundamental purpose of incarceration. How can decarceration proposals meet this?

Criticisms of Prisons

The argument, of course, is that prisons do not really protect since virtually all inmates return to civilian life, many of them more dangerous than when they entered. At best any protection is temporary during the year or two sometimes five, that prisoners are typically incarcerated. Of course, the average-time-in-prison statistic is somewhat deceptive: a number of violent offenders spend a much longer time in restraint and numerous lesser but persistent violators do life on an installment plan. In any case does the argument that incapacitation is only temporary or sequential lead to the conclusion it should not be used at all?

> *"There are abroad in our land these other alternatives that, fully implemented, may well cause the decarceration proponent to look back with nostalgia to the prisons of yesteryear."*

Proponents of decarceration rarely rest their case here but instead advocate clinical and perhaps sociological intervention in community setting with an eye toward some sort of cure of the offender or improvement in his environment. They feel this is the only true path to long-range community safety. The problem with this, as reasonable as it sounds, is that at present there are only limited "cures" for serious criminal violators and even more limited opportunities for correctional services to do much about changing crime producing environments. Can a fifty year old aggressive and persistent homosexual child molester be effectively treated? Can correction services improve the life-chances of those in Harlem? Letting hopes run wild assume these kinds of things could be achieved, would it be possible to accomplish them in such a short interval that the community would be continuously protected from the depredations of offenders under treatment?

Alternatives

Incapacitation, even temporary restraint, of offenders perceived to be dangerous is an important element in our sentencing process. If the prison alternative is removed, it may well be that other and perhaps worse alternatives will be forthcoming. Most decarceration proponents have looked in only one direction—toward community based interventions—but our social order is not ruled by social workers or clinicians. Different alternatives can be, and in fact have been, suggested by others of different orientation and political hue. To dismiss these suggestions as hardhat or irrational is to ignore political reality and the dedicated, high-minded decarceration proponent may find himself in a world he never made.

What are some of these prison alternatives? One, of course, is the death penalty. It was only yesterday that the Supreme Court in a confused and confusing opinion outlawed capital punishment. Prior to this decision, the death penalty was disappearing by non-use in any event (we had no executions in the United States in a number of years, although it was still possible in the majority of our states), but since the court decision a number of jurisdictions are attempting to reinstate capital punishment by legislation conforming with the court opinion. Aside from issues of the letter of the law there is the question of whether capital punishment is really likely to be seized upon as an alternative to incarceration. I think so. In reverse, incarceration has been a major alternative to the death sentence in serious crime cases; historically imprisonment has been a much stronger alternative to death than probation has been to imprisonment. In any event, imagine a society without prisons having instead large probation services, small residential treatment facilities and other community based correction programs. In this society serious crimes occur: an airplane is hijacked and the pilot killed, terror bombs are mailed, kidnappings occur, children are raped and other atrocities go on, infrequent perhaps but part of the warp and proof of living in a large complex, industrial society. It appears to me that if foreclosed from incarceration, the legislative response would inevitably be the death sentence.

Are there other alternatives less extreme than capital punishment and for less horrible crimes that might well rise to operational prominence?

Vigilante Justice

One possibility, strange as it sounds in contemporary society, is vigilante justice. There is, in fact, a discernible reversal of public-witness apathy to crimes of violence, the don't-get-involved response so widely decried when a number of citizens watched without intervention the murder of Kitty Genovese in New York City a few years ago. In recent months there have been numerous examples of crowds pummeling offenders who committed crimes in the open and apparently more than one narcotics pusher has been thrown from a rooftop by citizens who object to heroin being sold in their neighborhood. Some vigilante groups are organized into private neighborhood patrols: other have been co-opted by the police and made official "blockwatchers" and "auxiliary patrolmen." While a good deal of vigilante activity is a response to police ineffectiveness or inefficiency more than simply catching perpetrators is involved. Often judgement is rendered, sentences meted and punishment carried out on the street. It has long been any contention that while the death penalty had very little deterrent effect on criminals, its potential did act to deter victims, witnesses and the police. In a jurisdiction without the ultimate penalty and where a police officer is murdered, it would seem to me that the chances of the killer being brought in alive are somewhat slimmer than if capital punishment was at least a possibility. If so, imagine the chance if both capital punishment and imprisonment are foreclosed. Another potential is electronic surveillance, perhaps combined with electronic conditioning, of persons under community supervision. A prototype form of this technique has been used with some probationers but its full potential—and all of its implications, Constitutional and otherwise—remain to be played out. Nonetheless, it is presently possible to implant electrodes into persons, as into animals, to monitor their movements and to send painful stimuli to condition them from occasions of sin. According to the calendar we are within a decade of 1984, technologically we have arrived. Electronic control has the potential not only of supplanting prison walls, but of reducing probation staff as well. Given the great American love for gadgetry, it seems probable that a probation staff composed of a single observer and an electronic console will be most attractive to those with authority to fund and implement correctional programs.

Still another alternative might be civil commitment to mental hospitals as they exist at present or in some modified form. At best this is simply lateral transfer; at worst it is retrogressive, a return to the medical model of corrections popular in the 1940s. While it may well be that a larger proportion of offenders than at present can profit from therapy in hospital settings, if any significant number of violent dangerous violators are hospitalized it will probably require a modification of such facilities in the direction of maximum security. Development of perimeter and internal security measures to control a mix of traditional psychotics and criminal offenders would most likely move the hospitals closer to prisons than the reverse. Furthermore, it is doubtful that many persistent and professional violators, now imprisoned, are really appropriate targets for effective clinical psychiatry. And absent significant changes in legislation the mental hospital alternative would be reversion to a completely indeterminate—one day to life—sentencing system. With all its faults, incarceration in prisons has for the most part, clearly specified limits based on the conduct of the offender, not on his condition.

It would be nice if prisons could be abandoned and all inmates returned to community living, staying on the path of righteousness with the aid and assistance of probation and clinical staff. But simply opening the gates may not lead in this direction: there are abroad in our land these other alternatives that, fully implemented, may well cause the decarceration proponent to look back with nostalgia to the prisons of yesteryear.

> *"Any significant moves in the direction of diversion and decarceration, as attractive as they sound, have a long way to go and numerous obstacles to overcome."*

1. *The Punitive Ideal and Deterrence.* Some offenders are sent to prison not for purposes of treatment and rehabilitation, but simply as punishment and, often related, as "examples" to others. Anger, revenge and deterrence, while not noble motives, are nonetheless part of our sentencing system. It can be argued that this is wrong: punishment should not be sanctioned as a state response and deterrence is dubious at best. In fact, both these arguments have been made in one form or another many times without, however, much effect on judges and legislatures. Operationally, a problem is presented to courts and law-making bodies, not so much by run-of-the-mill felons (most of whom have been poor and underprivileged for such a long time that their criminal activity is understandable if not permissible) but by their more socially and economically fortunate counterparts, particularly white-collar violators and by organized and professional criminals. While it is true that the wealthy and powerful have available resources to delay, obfuscate and otherwise put the whole criminal justice system fully through its own tedious tests, some are convicted and come down to the wire of sentencing. What should be the sentencing response with cases involving willful and multiple tax evasion? embezzlement? price-fixing? What should have been done with Al Capone? Hoffa? Alger Hiss? What should have been done with former Vice President Agnew? For the most part these are not broken-home, teenage neurotics, discriminated against, emotionally disturbed violators, but business and political leaders or their parody, the American gangster.

Part of the purpose of the sentencing ritual is affirmation of cultural norms. We express by punishment and the other aspects of this "social predation" ceremony, the limits of our toleration of deviance. Can a social order exist without such ceremonies? Perhaps, but there are no models among large industrial societies of the world on which to rest a non-punitive hypothesis. Even Durkheim's imaginary society of saints must continuously reaffirm its outer limits by punitive sanctions.

Due Process

Our criminal justice system, including sentencing and post conviction processing, is cumbersome but deliberately so. We do not, and have never, advocated efficiency and effectiveness as the sole end or the primary means of crime control. Of all our systems of compulsory conformity—and there are many from the public school on—the criminal process is the most elaborate, with rigid requirements of notice, proof, procedural regularity and due process of law. The detailed stages and steps in the criminal process have evolved slowly, often at clearly recognized costs to effective crime control. Every decision about (or for) suspects, defendants, offenders, probationers, inmates and parolees is circumscribed by legislation, surrounded by appellate court decisions, with excesses forbidden by Constitutional protections afforded even the worst among us. When movement is from formal processing to diversion, out-of-court settlement, pre-trial counselling and informal post-conviction alternatives, there is invariably a reduction in procedural regularity and less attention to matters of proof and due process. We have had seventy years of experience with diversion and alternative interventions with juvenile delinquents and, in the final analysis, the juvenile court movement has been found wanting. There probably never has been a more well intentioned development than the juvenile court. Dedicated proponents sought to destigmatize criminal processing, to intervene early and informally in the best interest of Johnny Doe, to build a system of justice for children almost exactly like that imagined today by diversion and decarceration proponents for adults. The cost of the juvenile experiment was abandonment of many of the procedural safeguards of the law without accomplishing the other objectives of treatment and rehabilitation, or achieving those elusive "best interest" results. Can we really promise more with adults?

In summary, any significant moves in the direction of diversion and decarceration, as attractive as they sound, have a long way to go and numerous obstacles to overcome. No one, myself included, is in favor of present-day prisons, but until feasible and effective alternatives which meet all the needs of crime control and which respect all its safeguards are developed, then to simply postulate decarceration is not only foolish but dangerous.

Prisons need not and should not be human warehouses, nor ugly and brutalizing. Nor should they be used to chill political dissent or sincere efforts to change our social order in the direction of a more equitable, just and crime-free culture. Neither should they be used cosmetically to remove "nuisances" from our streets, to hold the inept, unpleasant or unemployed who present no real physical danger to others. But until the millennium when the crime-producing factors in our world will have been eliminated, incarceration of the dangerous and the deliberate—the violent, the professional, the organized and the willful, persistent offender—is not only necessary but is itself an alternative to worse choices.

Donald J. Newman is the Dean of the School of Criminal Justice at the State University of New York at Albany

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REACTION PAPER

NAME ______________________ CLASS ______________

TITLE OF SELECTION OR ARTICLE ______________________

AUTHOR OF SELECTION OR ARTICLE ______________________

DATE OF SELECTION OR ARTICLE ______________________

I. STATE THE TOPIC OF THE SELECTION: (SPECIFIC TOPIC)

II. STATE TWO MAJOR POINTS, IDEAS, AND/OR THEMES OF THE SELECTION

1.

2.

III. STATE THE FACTUAL EVIDENCE THAT THE AUTHOR USES TO SUPPORT EACH OF THE POINTS LISTED IN NUMBER TWO. (A MINIMUM OF TWO ARE REQUIRED FOR EACH)

1. a.

b.

2. a.

b.

IV. STATE YOUR OPINION OR REACTION TO THE ARTICLE. BE SURE TO US FACTUAL EVIDENCE TO SUPPORT YOUR IDEAS. (YOU MUST SUPPORT YOU IDEAS TO RECEIVE PROPER CREDIT.) USE THE BACK OF THIS SHEET FOR YOUR ANSWERS.

ACTIVITY B: Local Alternatives

Procedure:

1. Read the article "Alternative to Prison". Have students discuss their reactions to the Bob Johnston's program. List the advantages and disadvantages of incarceration vs. decarceration.

2. Contact your local Sheriff's Department and Probation Department and get information on local program for alternative sentencing. Ask for names of individuals that would help provide information on these programs. Divide your class into groups giving each a program to investigate. Each group will present a written or oral report on this program and its success.

FURTHER ACTIVITES: See Criminal Justice: Sentencing Activites A and B

Alternative to Prison

E[illegible]nmate Expands Local Program for Young Offenders

By STEVE POUNDS

AUBURN — Bob Johnston stared out the window, his eyes affixed to the edifice of the Auburn Correctional Facility.

He had been in and out of the prison for 12 years on charges of forgery and burglary.

"I was standing over in the prison (recently), and I still have butterflies in my stomach," he said, clutching his belly through a trim navy-blue double-breasted blazer.

Johnston, 52, now works to keep young people who can resolve their troubles out of the maximum-security prison.

For the past eight years, he has served as the director of a program in Tompkins County to divert young first-time offenders from the criminal-justice system into counseling.

In March, he laid the groundwork for the same kind of program in Cayuga County. It is aimed at 16- to 21-year-olds.

"It allows the defendant to rethink and talk about those actions that led to his arrest," Johnston said.

At a young defendant's first arraignment, he or she would be plucked from the judicial process before pleading to the crime.

Over the next six months, the youth would be evaluated, based on reports about his background from school administrators, family members, police and employers.

"Once we determined the why — that's the most-important thing — then we'll deal with the problem," Johnston said.

The problems that led to the arrest could be as serious as drug abuse or alcoholism. Or they could be as typical as peer pressure or rebellion against parents.

"Often, people who have a problem don't realize it," Johnston said. "To them, everything is normal. To the person himself, he doesn't realize anything is wrong.

"What we hope to accomplish is (to show) that there is an answer. If they resent their parents, they're not going to get back at them by stealing. There are alternatives. We try to get the family involved," he added.

In Johnston's own life, he learned to vent his frustrations by being a clown. Many Tompkins, Seneca and Cayuga county residents might know Johnston by another name — Happy Face the Clown.

"I could do stupid things, crazy things. But when you're a clown, it's funny," he said.

Johnston said his program has one appealing facet for someone who can identify and cure his problem.

If the program, known as pretrial diversion, works, the youth's record is expunged. If it doesn't work and he or she commits another crime, the youth is tried in the courts.

"If it doesn't work, we haven't lost anything except for time," Johnston said. "But we've still got them, and maybe we can push that magic button and they won't commit that crime again."

Often, Johnston sends the offender to another social-service agency for counseling. In Auburn, he may not have to send them far. He is setting up an office at Cayuga Counseling Services, 46 South St., with donated furniture.

Although he is paid $18,000 through the state Division for Youth, that does not include office expenses, he said.

During his first weeks in the Cayuga County, Johnston has been meeting with law-enforcement and judicial officials. It is the district attorney and the judge who must concur before a youth may be taken out of the courts.

"I hope to build up credibility in [illegible]e program so people won't think we're another bleeding-heart program," Johnston said.

Those in the judicial system are watching the progress of the program and seem open to its possibilities.

Auburn City Judge James Cuddy will be one of the first members of the judicial community to see it in action. It is in his jurisdiction that the pretrial diversion program will be used on a limited basis.

"My position is that it is another alternative, in some cases," Cuddy said.

The judge said it would be suited to youth offenders who commit a serious crime, but have no previous record with the police.

"I think it's worth a try. In some cases, there is no inclination toward the (normal judicial) process of fines, conditional discharge, jail or probation. This would be a fifth alternative," he said.

Cayuga County District Attorney Paul Carbonaro is taking a wait-and-see approach to Johnston's program.

"It sounds like a good idea," Carbonaro said. "There is some indication that it could work. He's starting out on a limited basis in Auburn City Court and (the town of) Aurelius. I'm going to see how it works before I endorse it."

Johnston said the Tompkins County program has been successful. Of the first-time offenders who went through the program, 87 percent were not re-arrested, he said.

Johnston also said the diversion program could cut costs in the judicial system.

In his own case, Johnston went to the judicial system as a forger. By the time he was released, he had learned a new trade — burglary.

He said young people are impressionable and can be steered into more-serious crimes while in the penal system.

"That's why I'm an authority on the place," Johnston said. "Most of my experience is from within the system. When I see a kid, I see myself."

OBJECTIVES:

1. Students will understand that probation and parole function as types of relief from jail confinement.
2. Students will comprehend the differences between probation and parole.
3. Students will be aware of the rationale behind the ideas of probation and parole.
4. Students will comprehend the various criteria for determination of those to be considered for probation and parole.
5. Students will understand what is meant by probation conditions and parole conditions, and what may happen to those who violate such conditions.
6. Students will develop attitudes of critical thinking and techniques of problem solving.
7. Students will develop speaking and writing skills.

INFORMATION FOR THE TEACHER

What is probation and how does it function?

1. Probation is a court sentence which provides for the release of the offender, providing that certain conditions imposed by the court are adhered to.

   The court has the right to cancel probation and resentence the offender upon violations of the conditions.

2. The concept of probation had its beginning in the mid-1800's as a measure designed to keep petty offenders out of the environment of hard-core offenders and the often corrupting influences of jails and prisons.

3. If probation is to succeed, there must be effective supervision by a probation officer.
   (a) The offender is required to report to his assigned officer on a regular basis.
   (b) Probation officers are usually trained in the field of social work with emphasis on criminology and corrections.
   (c) Part of the role of the officer is to help the offender solve his/her various problems.

4. Conditions of probation are often determined by the judge upon the recommendation of the pre-sentencing report of the probation officer. A judge often imposes two conditions.
   (a) Requirement for the offender to spend a period of time in jail before the probation begins.
   (b) Insistence on victim restitution to repay for any damages done.

*5. Factors generally determining if a person should be placed on probation are:

   a. The defendant's criminal conduct neither caused nor threatened serious harm;
   b. The defendant did not consider that the criminal conduct would cause or threaten serious harm;
   c. The defendant acted under a strong provocation;
   d. There were substantial grounds tending to excuse or justify the defendant's criminal conduct;
   e. The victim of the defendant contributed to the commission of the crime;
   f. The defendant has compensated or will compensate the victim for his or her injury or damage;
   g. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present crime;
   h. The defendant's criminal conduct was the result of circumstances unlikely to happen again;
   i. The character and attitudes of the defendant show that he or she is unlikely to commit another crime;
   j. The defendant is likely to benefit from probationary treatment;
   k. The imprisonment of the defendant would cause excessive hardship to the defendant or his dependents.

   *Available on sheet to be reporduced as transparency or student handout.

6. If a probationer violates the conditions of his probation, there are two courses of action the probation officer may take:
   a. He may give a warning to the probationer;
   b. He may ask the judge that the probation he ordered back into court for a probation revocation hearing.

7. At a probation revocation hearing, the judge must decide if probation is to be continued or revoked.

*8. When a judge sets conditions of probation, all or any of the following might be invoked.
   a. Defendant is to spend a specified period of time in jail;
   b. Defendant is required to pay a fine, plus a penalty assessment to the probation officer, as the judge directs;
   c. Setting of a minimum fine or amount of restitution;
   d. Provide for restitution to be made through the probation officer in a prescribed amount and manner;
   e. Prohibition from drinking alcoholic beverages, and staying out of places where they are sold;
   f. Prohibition of use and possession of narcotics, restricted drugs, and paraphernalia, and not to associate with persons of that element.
   g. Defendant to submit to periodic anti-drug testing as directed;
   h. Defendant may not gamble, nor frequent places where such takes place;
   i. Defendant may not associate with certain persons (names to be determined by the court);
   j. Defendant must support dependents as directed;

k. Defendant must seek and maintain training, schooling, or employment as directed;
l. Defendant must maintain a residence as directed;
m. Defendant may not own, use, or possess any dangerous or deadly weapon;
n. Defendant must submit his person/property to search and seizure at any time to any law enforcement officer with or without a warrant;
o. Defendant must obey all laws, rules, and regulations of the Court and Probation Department.

*Available on sheet to reproduced as transparency or student handout.

VOCABULARY:

criminology
corrections
probation
probationer
probation officer
probation revocation hearing
restitution

ACTIVITY A: Brainstorming

Brainstorm the following:

1. What are some advantages in granting probation to an offender?
2. What are some possible disadvantages?
3. Students will discuss advantages vs. disadvantages.

CTIVITY B: Guest Speaker

Procedure:

Invite a Probation Officer to class. Find out about his/her probation procedures and administration. Questions to be asked might include the following:

1. How are probation services organized in your area?
2. What is the average caseload of a probation officer?
3. In your area, what percentage of offenders successfully complete their terms of probation? Is there any way to compare other jurisdictions?
4. Describe the typical day of a probation officer.
5. What are the most important conditions which make for a successful probation?

(Students should be encouraged to come up with their own questions as well.)

ACTIVITY C: You Be The Judge

Procedure:

Divide the class into small groups of three to four. Have students review the sheet on Factors Determining Probation.

1. Hand out reproducible sheets C-1, C-2, C-3, c_4.
    a. Have students read the materials on each of the four cases.
    b. On the basis of each case study, have the students decide which, if any, should be placed on probation.
    c. Within each group, have the students explain their decisions.

ACTIVITY C: Student Handout #1

NAME: Jane Carson
AGE: 21
BACKGROUND: Jane Carson is one of 10 children from a broken family. She doesn't know her father and doesn't get along with her mother. Her school grades were very bad. She speaks poorly and cannot read. She has no work skills. She has a long record of drug abuse. Carson has tried to commit suicide four times. She first became pregnant at age 15. She has three children by two different fathers. She is married. Her husband is in jail for assault and for selling dangerous drugs. Carson was sent to state mental hospital several times starting at the age of 11. A social worker recently wrote: "Her whole life seems to have been one of looking around for something or someone to need her as a worthwhile individual."

Prior Record:

Age	Arrest Record	Action by Juvenile Authorities
15	prostitution	probation (1 year)
16	grand theft	placed in foster home
17	runaway from foster home	committed to state mental hospital for 90 days observation; released
17	grand theft auto	probation (3 years)
18	burglary	
		Action by Adult Authorities
18	burglary	probation (3 years)
18	theft	probation continued
19	shoplifting	10 days suspended sentence; $35 fine
20	theft	county jail (90 days); attempted suicide and was placed in a state mental hospital; escaped

CURRENT CASE: After escaping from the state mental hospital, Carson surrendered. Youth authorities sent her to a school for women. Here she had a fight with another woman whom she burned severely on the face with an iron. After the incident, Carson said, "I wish now I had killed her."
VERDICT: Jane Carson pleaded guilty to charges of assault and battery (felony).

ACTIVITY C: Student Handout #2

NAME: Allan Jacobs
AGE: 21

BACKGROUND: Allan Jacobs is the oldest of six children. His father was an alcoholic and gambler. His parents were divorced in 1971. Jacobs dropped out of high school before completing the 11th grade because of failing grades and truancy. He has an average I.Q., but the few jobs he has held have not lasted long because he has been arrested so often.

Prior Record:

Age	Arrest Record	Action by Juvenile Authorities
17	possession of dangerous drugs	probation
18	under influence	counseled and released
		Action by Adult Authorities
19	possession of marijuana	county jail (180 days) - sentence suspended; 3 years probation
19	burglary	county jail (30 days) plus one year probation
19	assault with a deadly weapon	released; victim refused to prosecute
20	grand theft auto; hit and run while under influence of drugs	committed to Youth Training School (paroled after 12 months)

CURRENT CASE: Three months after his release on parole from the youth training school, Jacobs was arrested for armed robbery during which he took an automobile. Jacobs pleaded guilty to the robbery charge. He said he took the car because "I needed a ride home." He claims he never had a gun, but only pointed his index finger inside his shirt so that it looked as if he had a gun. No gun was found by the police when Jacobs was arrested.

VERDICT: Guilty of armed robbery (felony).

ACTIVITY C: Student Handout #3

NAME: Dave Riley
AGE: 24

BACKGROUND: Dave Riley had a relatively normal childhood and upbringing. He has an above-average I.Q. and earned above average grades in school. He was graduated from high school and attended junior college for two years. He is married and has one child, a son. He has no record as a juvenile offender. His record as an adult offender is short and generally minor except for his most recent arrest.

Prior Record:

Age	Arrest Record	Action by Juvenile Authorities
21	receiving stolen property	case dismissed for lack of evidence
22	drunk driving	county jail (10 days) - suspended sentence $150 fine
23	sale of stolen property (3 TV sets)	county jail (6 months) - suspended sentence; 3 years probation

CURRENT CASE: Riley and a partner stole an automobile and got police badges and handcuffs from a pawn shop. Posing as police officers, Riley and his partner entered a liquor store, got the confidence of the owner and then held him up for $2,000. Two days later, the pair tried the same thing again, but were captured while carrying out the robbery. Riley has confessed to his part in the two crimes. He said he had to raise $16,000 quickly because of financial difficulties in his failing TV repair business.

VERDICT: Riley pleaded guilty to one count of armed robbery, one count of attempted armed robbery, and one count of grand theft auto (felonies).

ACTIVITY C: Student Handout #4

NAME: Rodney Baker
AGE: 18

BACKGROUND: Rodney Baker has a long history of unstable behavior. At birth it was reported that he had possible brain damage. He was a behavior problem at home and in school from the age of 3 on. Baker never knew his father who had been sent to state prison for a narcotics offense before he was born (his father eventually died in prison). Another man lived off and on with his mother in a common-law relationship. Although Baker has a normal I.Q., his school record shows failing grades, disobedience, truancy, and rejection by his peers. At age 9 a psychiatrist classified him as "emotionally unstable with a minor brain disfunction resulting in rebelliousness, anti-social behavior, and attention seeking." Baker has spent many years in different institutions because of his unstable behavior and delinquency. At age 15 a psychologist reported, "Rodney's personality growth is typical of what one sees in many boys who have spent a good deal of time in an institutional setting where they have not been given the warmth, stimulation, or identify that is part of a normal healthy home and family setting."

Prior Record:

Age	Arrest Record	Action by Juvenile Authorities
8	petty theft, runaway, and incorrigibility	counseled and released to mother
9	burglary	placed in a home for disturbed boys; attended several different such homes from age 9-15; expelled from one home at age 15 after hitting another boy with a rock; placed in a juvenile camp
15	camp runaway	Youth Authority School; several fights with other boys; released on parole to mother after 6 months; refused to obey mother at home
16	grand theft auto	parole suspended

CURRENT CASE: While awaiting his juvenile court hearing for the grand theft auto charge, Baker, at age 16, robbed and murdered a 21 year-old liquor store delivery clerk. Below is Baker's confession to the Police:

> At 1:30 I called up Bill's Liquor Store and I told him I wanted to order a case of Colt 45 beer. They said they were going to bring it right now. I was in the bedroom talking to some girl. I already had the knife with me because I already had it planned that I was going to rob the guy when he got there. I went into the front room and the case of beer was on the table; I got the knife and put it around is neck and threw him on th floor and told him this was a holdup. He just kept on saying "Don't" I just kept stabbing him. I don't remember how many times. He kept on giving me a hassle and finally he settled down and he just layed there. I dragged him through the bedroom and down the back stairs. I threw him over in the next yard and

I went to the high school and then to the playground. When I was stabbing him, my hand kept sliding down on the blade and that's how I cut my hand.

VERDICT: Baker turned 17 shortly after he was arrested for murder. A petition was filed in juvenile court to try him as an adult. After about a year's time (during which Baker was held in several different detention facilities) the petition to try him as an adult was approved, and Baker pleaded guilty to second degree murder (felony). Baker was 18 years old by the time his trial was completed.

ACTIVITY D: Probation Revocation Hearing: A Role Play

1. Hand out information sheets and have students read the materials.

   Assign students as per directions.

ACTIVITY D: Student Reading

PORBATION REVOCATION HEARING/A ROLE PLAY

Members of the class will role play a probation revocation hearing. After the role-play, the class will have an opportunity to decide whether probation should or should not be cancelled in the case present.

1. Prearrangements: Invite a probation officer, criminal lawyer, or judge to help you conduct and debrief this activity. Ask them to compare the procedures in this activity with those followed in your jurisdiction.

2. Divide the class into groups of four. Group members should choose the following roles: judge, probationer (Lee Miller), probation officer, public defender.

3. Read and study:
   a. Role Descriptions (for your role)
   b. Probation Report (including relevant conditions)

4. When you are ready, conduct the Probation Revocation Hearing with members of your group, using the procedures described below. When you are finished with the simulation, discuss the activity with other members of the class.

5. Procedure for Probation Revocation Hearing:
   a. The Judge opens the hearing and asks if all parties are present and ready.
   b. The Judge asks the Public Defender to present his/her case.
   c. The Public Defender may cross-examine the Probation Officer.
   d. The Public Defender may call Probationer Miller to testify. If this happens, the Judge may also ask questions.
   e. The Judge may ask the Probation Officer questions at any time.
   f. The Public Defender should close by summarizing his/her arguments against revoking Lee Miller's probation.
   g. The Judge should ask the Probation Officer to summarize his/her arguments in favor of revoking Lee Miller's probation.
   h. The Judge decides whether or not to revoke Lee Miller's probation (see alternatives listed in Judge's role description).
   i. Each Judge should announce his/her decicion before the entire class. The Judges should also explain the reasons(s) for their rulings.

ROLE DESCRIPTIONS:

Probationer: Lee Miller
You feel the circumstances forced you to violate the conditions of your probation. Consequently, you feel your probation should not be revoked. You have a Public Defender to represent you. Discuss with him/her the strategy you should follow at your Porbation Revocation Hearing. Decide with your Public Defender whether or not you should take the witness stand and testify on your own behalf and subject yourself to cross examination. You have the right to remain silent if you wish.

Public Defender:
You will represent Lee Miller at the Probation Revocation Hearing. Discuss with your client the strategy he should follow in attempting to convince the Judge not to revoke probation. Decide whether or not to call the Probation Officer to the witness stand in order to cross examine him/her with regard to his/her recommendation to revoke your client's probation. Also, decide whether or not your client should take the witness stand to testify. Your client has the right to remain silent, however, if your client does testify, the Judge may also ask questions.

Probation Officer:
You are Lee Miller's Probation Officer. You have written the probation report which will be the focus of this Probation Revocation Hearing. If you are called to testify, you should defend your recommendation that Miller's probation be revoked and that the 1 year suspended jail sentence be imposed.

Judge:
You were the trial judge at Lee Miller's trial. After his being convicted, you sentenced Lee Miller to a one-year county jail term. Then you suspended this sentence and placed Miller on probation. Today you must decide what to do in view of Miller's probation violations. Your alternatives are as follows:

1. continue probation under the existing conditions
2. continue probation with additional conditions that you will identify
3. revoke probation and impose the 1-year sentence

DOCUMENTS: Probation Report
Name of Probationer: Lee Miller
Age: 38
Marital Status: Divorced
Occupation: Assembly line worker
Employer: United Radio Company

CURRENT CONVICTION:

1. Probationer Lee Miller was convicted two months ago of manslaughter. Probationer Miller, while driving an automobile under the influence of alcohol, struck and injured a five-year-old girl.
2. Sentence:
   a. One year in county jail (suspended)
   b. $1,000 fine
   c. placed on two-year formal probation
   d. conditions of probation: 2, 5, 12, 13, 14, 15, 16, 20; special condition: Probationer is not to drive any motor vehicle during the period of probation.

PROBATION VIOLATION REPORT:

1. Two weeks ago at 7:55 a.m., Probationer Miller was stopped for speeding by a Highway Patrol Officer. The officer administered several field tests for drunk driving, and concluded that Probationer Miller may have been driving under the influence of alcohol. Probationer Miller was arrested and taken to a local Highway Patrol Station where a chemical test for alcohol consumption was administered. The result of this test showed that while Probationer Miller had been drinking alcohol recently, the level of this substance was below that required to indicate "driving under the influence". Probationer Miller was cited for speeding and driving without a license, then released.
2. Probation Violations:
   No. 5 - Probationer Miller drank an alcoholic beverage
   No. 20 - Probationer Miller drove an automobile with a license, and violated the speed law.
   Special Condition - Probationer Miller drove a motor vehicle during the period of probation.

STATEMENT OF PROBATIONER:

I admit I drove an automobile and was speeding in violation of my probation. However, I reported these violations myself to my probation officer within 24 hours of the incident.

It is also true that I had been drinking, but only in my own apartment. A friend had come over to spend the evening, and brought some beer with him.

I overslept the next morning and had to get to work in half an hour. I have been taking the bus to work, but this takes an hour. I decided to ask a neighbor if I could borrow his car so that I could get to work on time. He said it was O.K. to take his car.

I had already been late to work two times since getting my job a month ago. I was afraid that if I lost my job I would not be able to make support payments for my ex-wife and children and pay off my fine to the court. Both are conditions of my probation.

As it turned out, I was half a day late for work, but my boss listened to my story and decided to give me one more chance. I believe that I have learned my lesson from this, and promise to strictly follow my conditions of probation in the future.

RECOMMENDATIONS OF PROBATION OFFICER:

Probationer Miller seems to mean well, but also appears weak-willed. I recommend that probation be revoked, and the suspended 1-year county jail sentence be imposed.

DISCUSSION QUESTIONS:

1. What did the Judge decide in this case? Why?
2. Were some of the Judges more lenient than others? If so, how do you account for these differences in attitude?
3. Assume that there was a great deal of publicity surrounding Lee Miller's original manslaughter trial and that many people in the community were angry because Miller was placed on probation rather than being sent to jail. Do you think the Judges' decisions would have been affected by community feelings of this sort? Why or why not?
4. How is the Porbation Revocation Hearing different from a trial? How is it similar? What constitutional rights does the probationer have at this hearing? Why do you think this is the case?
5. In your opinion, is the Probation Revocation Hearing a fair way to decide whether a probationer should lose his/her probation status? Who or why not?

ACTIVITY C AND D: Student Handout

Factors generally determining if a person should be placed on probation are:

a. The defendant's criminal conduct neither caused nor threatened serious harm;
b. The defendant did not consider that the criminal conduct would cause or threaten serious harm;
c. The defendant acted under a strong provocation;
d. There were substantial grounds tending to excuse or justify the defendant's criminal conduct;
e. The victim of the defendant contributed to the commission of the crime;
f. The defendant has compensated or will compensate the victim for his or her injury or damage;
g. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present crime;
h. The defendant's criminal conduct was the result of circumstances unlikely to happen again;
i. The character and attitudes of the defendant show that he or she is unlikely to commit another crime;
j. The defendant is likely to benefit from probationary treatment;
k. The imprisonment of the defendant would cause excessive hardship to the defendant or his dependents.

*Available on sheet to be reproduced as transparency or student handout.

ACTIVITY C AND D: Student Handout

*Where a judge sets conditions of probation, all, or any of the following might be evoked:

a. Defendant is to spend a specified period of time in jail;
b. Defendant is required to pay a fine, plus a penalty assessment to the probation officer, as the judge directs;
c. Setting of a minimum fine or amount of restitution;
d. Provide for restitution to be made through the probation officer in a prescribed amount and manner;
e. Prohibition from drinking alcoholic beverages, and staying out of places where they are sold;
f. Prohibition of use and possession of narcotics, restricted drugs and paraphernalia, and not to associate with persons of that element;
g. Defendant to submit to periodic anti-drug testing as directed;
h. Defendant may not gamble, nor frequent places where such takes place;
i. Defendant may not associate with certain persons (names to be determined by the court);
j. Defendant must support dependents as directed;
k. Defendant must seek and maintain training, schooling, or employment as directed;
l. Defendant must maintain a residence as directed;
m. Defendant may not own, use, or possess any dangerous or deadly weapon;
n. Defendant must submit his person/property to search and seizure at any time to any law enforcement officer with or without a warrant;
o. Defendant must obey all laws, rules, and regulations of the Court and Probation Department.

*Available on sheet to be reproduced as transparency or student handout.

INFORMATION FOR THE TEACHER:

1. Parole is a process by which prisoners are released prior to the end of their sentences.
    a. It is granted upon recommendation of the parole board and prison authorities.

2. Parole serves specific needs.
    a. May be used to reward a prisoner for good behavior, thereby shortening the time to be served.
    b. Serves as a chance to provide adjustment and transition from prison life back into society.

3. The operation of parole systems is determined by state laws for state prisoners and by federal law for federal prisoners.
    a. Becoming eligible for parole does not mean that a prisoner will be automatically paroled.
    b. A parole board determines whether or not a prisoner will be released.
        1. Rules yes or no on each case presented to it.
        2. Decisions based on such as: seriousness of the crime for which the person was convicted and imprisoned; person's prison record; if the person seems capable of leading a crime-free life.

4. If parole board rules yes on an individual case, the prisoner is ordered to be released on parole.
    a. Prisoner agrees in writing to abide by a specific set of rules.
    b. Court assigns a parole officer to supervise the parolee for a fixed amount of time, not more than five years.

5. The Court sets certain standards or conditions which the parolee must abide by. Some common conditions are:
    a. The parolee must have employment or the reasonable likelihood of such;
    b. The parolee must meet on a regular basis with his/her parole officer;
    c. The parolee is forbidden to use alcohol;
    d. The parolee is forbidden to associate with ex-convicts;
    e. Tha parolee must secure permission to change residence;
    f. The parolee must gain permission to travel from one place to another;
    g. The parolee must secure permission to marry;
    h. The parolee must gain permission to buy a car.

6. If a parolee violates the conditions of parole, he/she will be returned to prison and must serve out the remaining time of the sentence.

7. There are certain problems with the parole system.
    a. The parole board should treat each case in a similar way which is not always done.
    b. The parole board has to predict who will and will not adjust to life in society.
    c. Public opinion often looks upon parole as a system of unfair leniency.
    d. Parole officers frequently have too heavy a caseload.

VOCABULARY:

parole
parolee
parole board
parole officer
recidivist

ACTIVITY A: Brainstorming

PROCEDURE:

1. Brainstorm with the class on the similarities and differences of probation and parole.
2. Have students define each term.

ACTIVITY B: Guest Speaker

PROCEDURE:

Invite a parole officer, or someone from a parole office to meet with the class and discuss his/her job.

ACTIVITY C: Parole Board Game

PROCEDURE::

1. See activity sheets C-1, C-2, C-3, C-4.
2. Reproduce sheets and hand out to class members, following directions

PAROLE BOARD GAME

INSTRUCTIONS FOR PROLEE's

1. Familiarize yourself with your own case history. Get together with persons in your situation and prepare a set of statements you will make to the parole board in your behalf.

2. You will be given a chance to plead your case before the board after they have questioned you.

3. Do not at any time interrupt the board members. Plan the right answers to any answers in any questions you are asked. Be polite and honest. Do not lie. Your job is to please the members of the board.

4. Should the verdict go against you - be polite and respectful.

BEST COPY AVAILABLE

Instructions for Parole Board Members.

The federal and most state corrections systems are organized around " indeterminate sentencing." This allows a judge to set the minimum and maximum sentence time for a prisoner according to provisions in the penal code)e.g., 5 years---to life for armed robbery). Under this system, however, the time a person actually remains in prison is decided by a parole board, not by the trial judge.

A fixed sentence differs from indeterminate sentences in several ways.

1. The range of time to be served is very narrow and set by law. For example a person convicted of assault with a deadly weapon micht receive a sentence of two to three years. In indeterminate sentencing, that term might be one to 15 yrs.

2. The prisoner must be told at the time of sentencing or shortly thereafter exactly how long he or she will be in prison.

3. Persons convicted of the same crime serve about the same amount of time.

4. Under fixed sentences, there is no parole. Judges have the right to set exact prison terms at the time of sentencing. Judges have little informatio to help them in making their decision----usually based on the type of crime the person committed.

5. Fixed sentences are preferred by prison reformers. Under the indeterminat system, a convicted person might serve vastly different amounts of time in prison.

Parole boards are appointed by the governor of the state. Numbers vary from state to state. Parole boards possess several very important powers.

1. Can set actual terms for prisoners;
2. Decide whether or not a prisoner can or should be released on parole.

Each prisoner's report or case is reviewed once a year. This might be done by the parole board members reading only prison staff reports. Or, a hearing might be held to give the prisoner a chance to speak directly to the board. This is done in order for the parole members to review the rehabilitation progress of the prisoner.

If parole is granted, the prisoner is released, but he must obey several "conditions of parole." Parole conditions usually require the parolee to report regularly to his parole officer, as well as to get a job and stay out of troubl In addition, special conditions of parole may be required. For example, a narcotics offender on parole may not be allowed to work in a store where drugs are sold. The length of time may be set anywhere from a few months to life. If a parolee violates any of the conditinns, his parole ma be cancelled after a court hearing. He will then probly be sent back to prison.

Procedure for Parole Board Hearing:

Prior to questioning the parolees, you have reviewed the material on each prisoner and have prepared several questions for each prisoner.

Below is some background information concerning the role of the parole board members, as well as some suggestions for types of questions to ask the prisoners.

You are all middle-class persons who have been appointed by the present governor of your state.

You were selected to serve on the board because you have either had experience in law enforcement or corrections work (e.g., police, FBI, district attorney, corrections officer); or, you have an interest in the field of correc

Instructions to Board continued:

. You are interested in all aspects of a prisoner's life, even those things which do not really relate to the crime the prisoner was put in for. You may wish to ask the prisoner questions about his/her past criminal record. attitudes about the police, judges, prison personnel; prisoners political opinions, racial views, religious beliefs, or sense of morality (what is right or wrong). Your purpose is to find out if the prisoner has been rehabilitated enough to be allowed back into society.

. Be sure to ask questions about the crime which resulted in each prisoner's current imprisonment. Get the prisoner's side of the story, but do not believe everything he tells you. In some cases you may feel that the sentence a prisoner got from the judge in his or her case was too light. Try to find out if the prisoner openly admits his guilt, and feels sorry for what he or she did. You might start by asking, "How do you feel about your crime?

. One thing that often upsets you is the number of times prisoners "get away" with little or no punishment for crimes they committed in the past. Some questions might deal with past crimes.

. You feel that women prisoners should be dealt with in a special way by the parole board. You feel that to be granted parole, a woman should be able to prove that she will not turn to a life of prostitution and immorality after being released back to society. A woman prisoner should be asked questi[illegible] about self-support, understanding birth control, and the kind of relatio[illegible] she will have with men.

. You are generally impressed with a prisoner who sincerely indicates th he or she works hard, cooperates with prison officials, tries to improve through education or vocational training.

. Finally, you are a person very conscious of demands made by politician and the public for stiff punishments for lawbreakers. Above all, you do not want to give the impression that you are "soft on criminals."

. You have 10 minutes to question each prisoner. The first prisoner called will be searched for any weapons and then told to sit before the board. Each board member will direct questions in turn to the prisoner. The prisone under no circumstances is to be allowed to speak without the permission of the parole board. The board may cut off the hearing at any time it wishes. At the end of the hearing, the prisoner should be allowed to make a statement in his or her defense--an appeal for release. The prisoner is then dismissed and the next prisoner is called.

. After all cases have been heard, the parole board meets to discuss the fate of the prisoner. Should parole be granted, indicate for how long, and whether the prisoner should be required to abide by any special conditions of parole.

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Prisoner Jackets

For Parole Board only

C-3

The prisoner "jackets" printed below represent summaries of much more detailed reports prepared by prison personnel.

Case 1

Name: Jane Carson
Sex: F **Age:** 23
Race: White
Marital Status: Married (husband in prison)
Current Conviction/ Sentence: Assault and battery, and assault with a deadly weapon/sentenced to the state prison for women for 2-5 years
Time served: 2 years
Parole Board Action Last Year: Parole denied/ recommendations: continue psychological counseling: take second grade reading program
Work/School Record: Assigned to laundry where she developed a poor work record due to faking illness numerous times/ started second grade reading program, but failed to progress
Prison Staff Report: Seven "write-ups" for violating prison rules: can be pleasant and cooperative at times, but tends to get angry easily; makes enemies among other inmates; no hobbies or worthwhile use of leisure time; attempted to commit suicide with a kitchen knife.
Prison Psychologist Report: Carson is still a disturbed and dangerous young lady. She knows she needs psychological help, but refuses to cooperate with the counseling and therapy program here.

Case 2

Name: Allan Jacobs
Sex: M **Age:** 25
Race: Black
Marital Status: Unmarried
Current Conviction/ Sentence: After serving 1 year in county jail for armed robbery, Jacobs was released, and one month later robbed a liquor store on an impulse/ convicted of armed robbery/ sentenced to a minimum security state prison for 5-25 years.
Time Served: 3 years
Parole Board Action Last Year: Early release denied recommendations: vocational training: continue high school program: group counseling
Work/School Record: Assigned to auto repair program where he developed a good work record, but appeared not to be very motivated to learn/took two high school courses (English and Math), but failed both after refusing to do assigned work
Prison Staff Report: Five "write-ups" for violating prison rules (all for fighting with other inmates), appears to be sullen and angry much of the time; does not get along with either other inmates or prison personnel; appears to have a "chip on his shoulder."
Prison Psychologist Report: Jacobs is quiet in group counseling sessions, and refuses to talk about his problems. He appears to have no concept about the rights and feelings of others.

Case 3

Name: Dave Riley
Sex: M **Age:** 26
Race: White
Marital Status: Married with one child
Current Conviction/ Sentence: Armed robbery, attempted armed robbery, grand theft auto/ sentenced to a minimum security prison for 5-life
Time served: 2 years
Parole Board Action Last Year: Early release on parole denied/ recommendations: group counseling: rehabilitative work assignment
Work/School Record: Assigned to work in prison dairy where he developed a good work record/took college level correspondence courses in business management
Prison Staff Report: One "write-up" for fighting with another inmate; very cooperative with prison staff, but is not sincere at all times; tends to be rejected by other inmates; he spends his leisure time studying and writing letters to his wife and child.
Prison Psychologist Report: Attended all group counseling sessions, but seemed to be trying to "psych out" the psychologist. Riley does not seem to feel that his crime was a serious one, and constantly complains that prison is a waste of his time. Nevertheless, his crime was serious and also quite sophisticated.

Case 4

Name: Rodney Baker
Sex: M **Age:** 23
Race: Black
Marital Status: Unmarried
Current Conviction: Shortly after being released from the Youth Training School on Parole, Baker was arrested for burglary/convicted of burglary/sentenced to a medium security prison for 5-10 years.
Time Served: 3 years
Parole Board Action Last Year: Parole denied/ recommendations: continue psychological counseling; continue high school program.
Work/School Record: Assigned to prison maintenance work where he developed a satisfactory work record/took one high school course in social studies which he barely passed.
Prison Staff Report: Two "write-ups" for violating prison rules; appears to be friendly and cooperative with prison personnel, but does not get along well with other inmates; seems to want to please prison staff members in order to get their approval.
Prison Psychologist Report: Baker seems quite willing to cooperate with his counselor, and readily talks to him about his problems. But he seems to crave attention and approval from all prison personnel. Despite his open attitude, Baker does not appear to feel sorry for his criminal acts.

Parole Board Game

Instructions for Parolee's

1. Familiarize yourself with your own case history. Get together with persons in your situation and prepare a set of statements you will make to the parole board in your behalf.
2. You will be given a chance to plead your case before the board after they have questioned you.
3. Do not at any time interrupt the board members. Plan the right answers to any questions you are asked. Be polite and honest. Do not lie. Your job is to please the members of the board.
4. Should the verdict go against you---be polite and respectful.

ACTIVITY D: Cartoon Analysis of Parole

PROCEDURE:

1. Reproduce cartoon sheet, either as a transparency or for individual student handouts.
    a. Have students write an essay on the meaning of the cartoon or oral presentation.

The revolving door

By David Seavey USA TODAY

ACTIVITY E: Article Analysis - Mark Moseley

PROCEDURE:

1. Reproduce article by Mark Moseley, and hand out to students.

   Have students write an essay on their reaction to the article or oral presentation.

ACTIVITY F: Article Analysis - Robert Blair Kaiser

Procedure:

Reproduce article by Robert Blair Kaiser, and hand out to students.

Have students write an essay on their reaction to the article or oral presentation.

ACTIVITY G: Student Debate

Procedure:

Have students hold a debate on the following topic:

Resolved: That the parole system in the United States should be abolished.

OBJECTIVES:

1. The student will be able to demonstrate that there are problems in correctional systems.
2. The student will be able to give reasons for the problems facing our correctional system.
3. The student will be able to demonstrate that numerous judges have declared prisons are unconstitutional.
4. The student will be able to define the term recidivism.
5. The student will be able to demonstrate that high recidivism fills the correctional institutions with repeat offenders, which caues overcrowding and reduces the effectiveness of rehabilitation programs.
6. The student will be able to show that there is larger populations of minority groups than whites in our prisons.

INFORMATION FOR TEACHERS:

Problems of the Correctional System:

1. Overcrowding
    - a. higher crime rate
    - b. get tough policy
    - c. mandatory sentencing required by law
    - d. higher recidivism rate
        - (1) released prisoners cannot cope with the outside world and its various choices and responsibilities
        - (2) prisoners survive by learning to adjust to a completely criminal environment.

2. Violence in Prisons
    - a. Types of violence
        - (1) beating
        - (2) homosexual rapes (desire for power and violence)
        - (3) murder
        - (4) extortion
    - b. Brutality of the system
        - (1) hardened criminals
        - (2) guard brutality
    - c. Lack of enough well-trained officers
    - d. Physical structure of prisons
        - (1) lack of space
        - (2) frustrations and tensions increase with lack of space

3. Putting Violent and Repeat Prisoners with Non-Violent First Offenders

4. Lack of Alternating Structures Other Than Maximum Security Prisons
    - a. All types of felons are together (violent and non-violent)

5. Judges are not or cannot do anything about the system.
    - a. laws require judges to sentence convicted felons to maximum/minimum terms of imprisonment.
    - b. The influence of the media
    - c. The limitations of the Justice System

6. Prisons seem to offer simple solutions.

7. There is public misunderstanding of the prison system, and of the movements toward prison reform.

8. Maybe the underlying problem is that we do not know what to do to change the behavior of criminals.

Two pertinent federal court cases:

Ramos vs. Lamm - A federal judge ruled a prison unconstitutional "in every aspect." (Colorado Case)

Rufe vs. Estelle - A judge reached the following conclusions about the Texas Correctional System:

1. prisons are filled with violence and brutality
2. prisons are overcrowded.

There is an article that describes the problems of the US Correctional System following. It can be run off and handed to the students. There are two copies - one as a teacher's guide and the other for the student. (which can be found with Activity #1).

VOCABULARY:

"bulldogging"
cruel and unusual punishment
felony
maximum security prison
recidivism

ACTIVITY A: The Crime of Punishment

Procedure:

1. Have the students read the Crime of Punishment article - it follows this sheet.
2. Break them up into small groups and discuss the problems of the present US Correctional System.
3. Bring the class back together and put their responses on the board.
4. Have them then offer any possible solutions to these problems (e.g.: probation, work release, alternative prison settings)

ACTIVITY B: Prison in the Classroom

Procedure:

Select a corner of your classroom and with masking tape, mark off an area nine feet long by six feet wide. Next, use the tape to mark off an area large enough for a bed, table, two drawer cabinet, toilet and sink. Put a chair or stool in the open area of the "cell". Imagine spending fourteen to sixteen hours each day locked in area that size. Now, try to remember something that happened to you about two years ago. Since the average Attica prisoner spent about two years in prison and since three out of four of the prisoners had spent time locked up before, you may begin to be able to get a small idea of what prison life would be like.

Select two students in the class and put them in the "cell" for the period. Then have them as well as the rest of the class who are observing them discuss the experience.

An additional question to discuss:

How might conditions and treatment in maximum security prisons affect the first-time offender who is sent there?

ACTIVITY C: Prison Problems

Procedure:

1. There are 5 questions attached concerning the present day US Correctional System. Give each student a copy of these quotations.

2. Have them agree or disagree with the statement then break them into groups of four to six after students have completed the exercise. Tell the students to share their responses with the group and discuss the reasons for the answers. Have one person in each group tally the group's responses.

3. Reassemble as a large group and have each group report its tally. Discuss items of particular interest, and provide the opportunity for students to add other points to the discussion.

ACTIVITY C: Student Handout

Below are listed five quotations concerning the problems of the present day US Correctional System.

> "Too many prisons are not much more than cages of inhumanity"
>
> "The first and most obvious step...is to simply stop throwing people into cages as punishment for activities that harm no one."
>
> "The only thing that keeps us all out of jail is lack of cell space."
>
> "Jails and prisons appear to generate their own insatiable appetite for prisoners".
>
> "The prison experience itself is often what will turn a first offender into a permanent life-time criminal."

ACTIVITY D: Interpreting Charts

Procedure:

There are six charts and one article attached. Give these to each student. Have each student individually list four or five trends they see. After this exercise is done, have them present their reponses orally and record them on the board.

For further discusssion: Use the following questions:

1. Will the get-tough approach on criminals bring down the crime rate?
2. Why are we ranked third behind the Russians and South Africans in prison population?
3. Has violent crime decreased? Why?
4. Who are in jail?
5. What is the cost of prisons?
6. Why has prison populations in some states decrease while others have increased?

ACTIVITY D: Student Reading

CORRECTIONS: About 1.5 millison of the nearly two million people under court sentences today aren't in prisons. Some, having served prison sentences, are on parole, reporting regularly to court officers on the outside. Others, not sentenced to prison at all, remain on probation until the court feels they can stay out of trouble.

Parole and probation systems are based on the belief that people who go wrong can, with the proper guidance, go straight, or become rehabilitated. This belief was challenged during the 1970s when criminologists admitted that no one knows how to rehabilitate most criminals.

That admission, coupled with the public's rising fear of violent crime, prompted judges to sentence criminals to longer prison terms. As a result, the population of state and federal prisons increased 94 percent between 1972 and 1982, with the average inmate spending 26 months behind bars. That stay would be longer, but few taxpayers are willing to pay for building needed cells. Prisons are paroling the best-behaved inmates early, to make room for newcomers.

Will the get-tough approach on criminals bring down the crime rate? All alone, it's unlikely to. More than one of every 600 Americans is in prison today. (The proportion is higher only in the Soviet Union and South Africa). To imprison more, for longer periods, experts say, would indeed bring down the crime rate. But the price tag -- many billons of dollars for new prisons -- is a cost that our society seems unwilling to bear.

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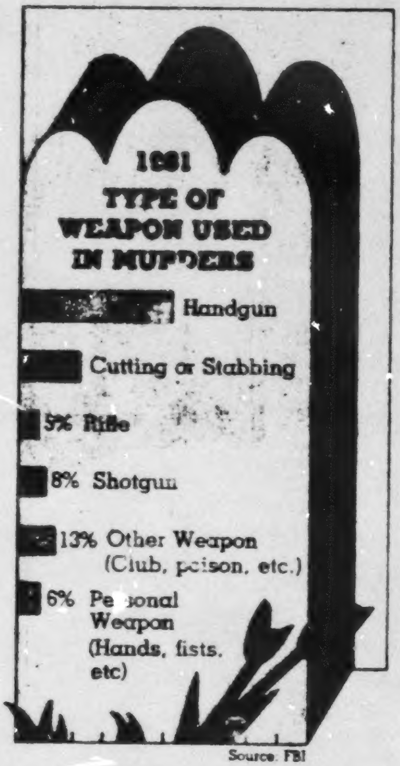
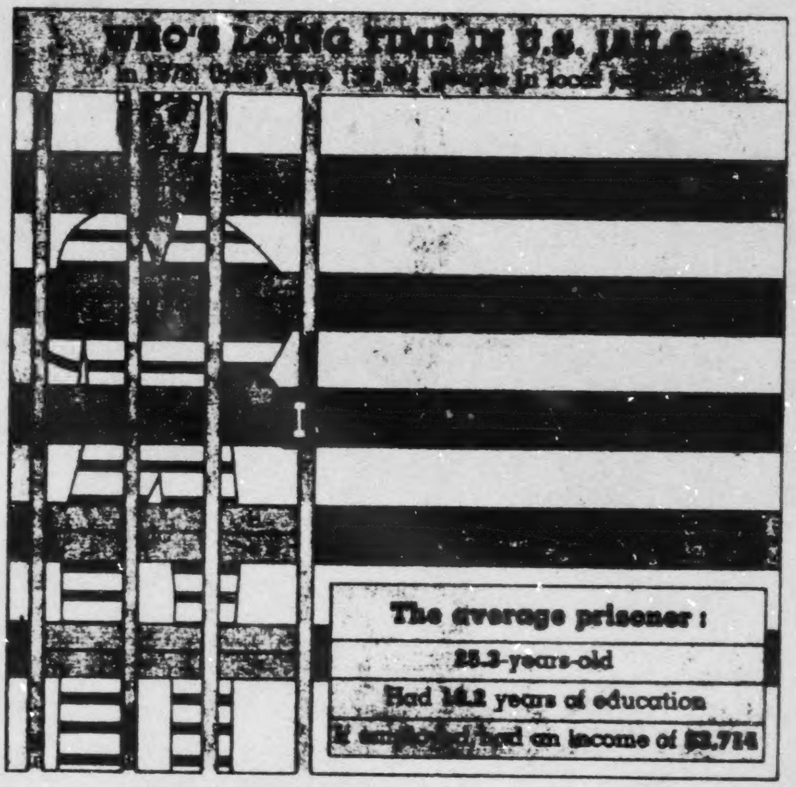
DATABANK

SIX VIEWS OF CRIME & JUSTICE



Source: FBI

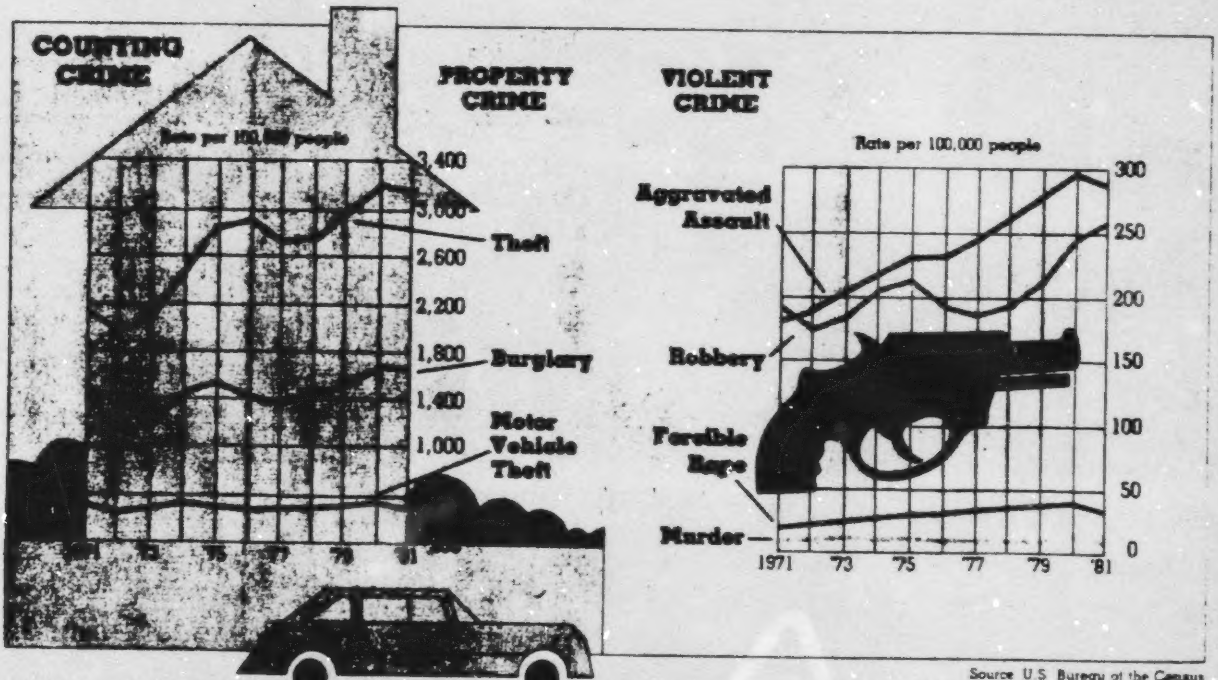


The average prisoner:

25.3-years-old

Had 10.2 years of education

If employed had an income of $3,714



Source: U.S. Bureau of the Census

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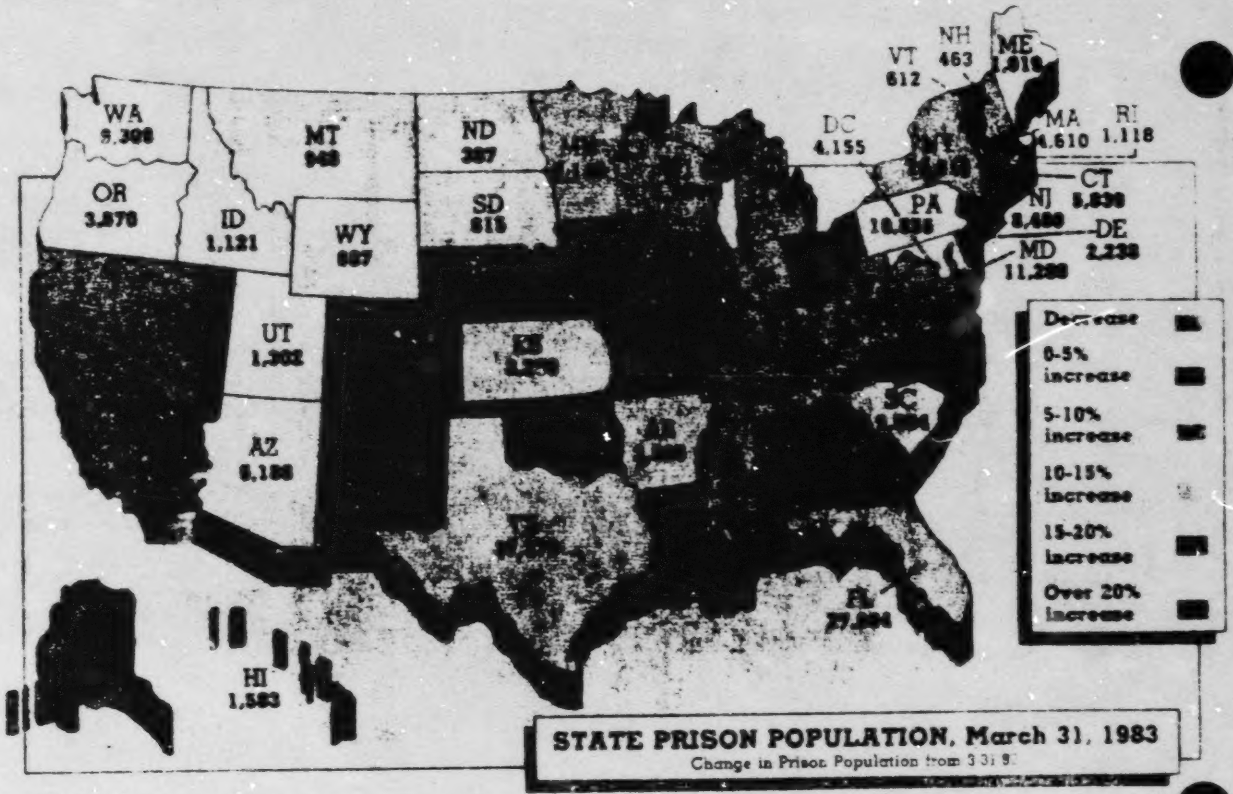
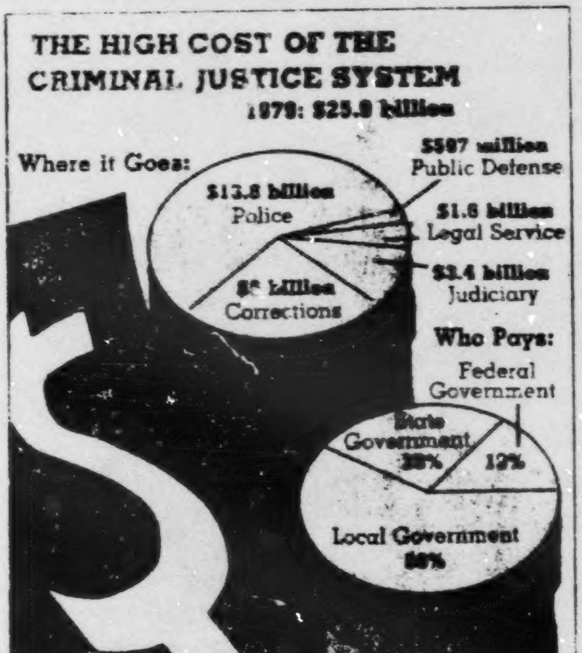


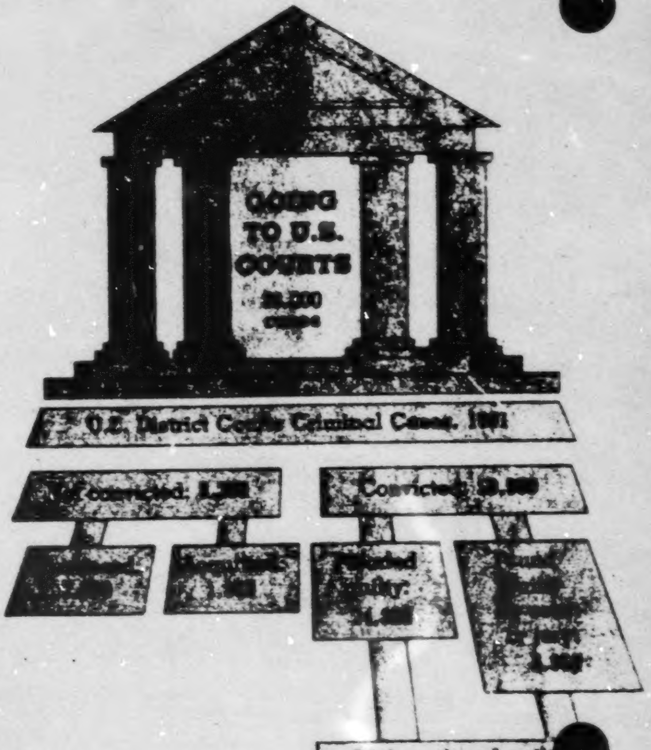
STATE PRISON POPULATION, March 31, 1983

Change in Prison Population from 3 31 82



THE HIGH COST OF THE CRIMINAL JUSTICE SYSTEM

Source: U.S. Bureau of Justice Statistics



Of those found guilty
13,700 imprisoned
12,200 put on probation
4,000 fined

Source: Administrative Office of the U.S. Courts

OBJECTIVES:

1. Students will understand what justice is, and how it is related to the entire legal procedure.

2. Students will understand how and why the meaning and application of justice has been able to adapt to different periods of time.

3. Students will comprehend the relationship between laws and values, and how each is reflected within the other.

4. Students will develop attitudes of critical thinking and techniques of problem-solving.

5. Students will develop speaking and writing skills.

INFORMATION FOR TEACHERS:

1. Generally accepted legal definition:

   The fair and equal treatment of all persons under the law.

2. Other possible definitions:
   a. Adherence to truth or fact; impartiality; fairness
   b. The rendering of what is merited; reward or punishment allotted according to desert, or in vindication of law or right; just requital.
   c. Principle of moral rightness; equity.
   d. Upholding of what is just, especially fair treatment and due reward in accordance to honor, standards, or law.
   e. The administration and procedure of law.

VOCABULARY:

anachronistic laws
equity
impartiality
just
justice
law
requital
values

ACTIVITY A: Brainstorming

Procedure:

Brainstorm with the class their ideas or what they think justice is. Write the student responses on the chalkboard. Come up with a working definition. (It may later be expedient to check back to the original definition after the various strategies and activities have been covered.)

ACTIVITY B: Anachronistic Laws

Procedure:

*It is frequently difficult for students to understand that law is an ever-changing phenomenon. However, most would probably agree that a major function of law is to "do justice". But what is justice? The root word is "just" meaning fair and right, but what is fair and right may be dictated by time, place, and circumstance. What is considered "just" is our society may not necessarily be considered "just" in another; and what is "just" in a given society may not be considered "just or fair" in that same society at another time in history.

*The strategies and activities in this section are adpated from materials by the Law in a Free Society project.

1. Write the following propositions on the chalkboard and ask the students to explain each and give an example of what each generalization means.
   a. Law evolves as a result of the changing needs and values of the people.
   b. The laws and values of a society are interrelated. Values are reflected in laws, and laws reinforce the values.

2. On a transparency or handout, (next page) discuss with students the various anachronistic laws and ask whether they once reflected the needs and values of the people. These laws are listed here, and are also available to be reproduced. Ask students:
   . What values are reflected in these laws?
   . What was probably the historical setting in which these laws were written?
   . Do values and laws change rapidly? Why or why not?

ACTIVITY B: Student Handout

ANACHRONISTIC LAWS:

A. IT IS ILLEGAL FOR PEOPLE IN SOUTH CAROLINA TO CRAWL AROUND IN THE PUBLIC SEWERS WITHOUT A WRITTEN PERMIT FROM THE "PROPER AUTHORITIES."

B. IT IS ILLEGAL TO ROLLER SKATE DOWN A STREET IN QUINCY, MASSACHUSETTS.

C. IT IS ILLEGAL FOR MILKMEN TO RUN WHILE ON DUTY IN ST. LOUIS, MISSOURI.

D. IT IS ILLEGAL TO USE THE SAME FINGER BOWL WITH A FRIEND IN OMAHA, NEBRASKA.

E. IT IS ILLEGAL TO PUSH BABY CARRIAGES DOWN A SIDEWALK TWO ABREAST IN ROCKVILLE, MARYLAND.

F. IT IS ILLEGAL FOR WOMEN IN SOME JURISDICTIONS TO STAND NEARER THAN FIVE FEET AWAY FROM BARS WHEN DRINKING IN PUBLIC.

G. IT IS ILLEGAL FOR MORE THAN EIGHT RABBITS TO RESIDE ON THE SAME BLOCK IN TUSCUMBIA, ALABAMA.

H. IT IS ILLEGAL TO ADVERTISE ON TOMBSTONES IN ROANOKE, VIRGINIA.

I. IT IS ILLEGAL TO HUNT OR SHOOT CAMELS IN ARIZONA.

J. IT IS ILLEGAL TO POKE A TURKEY IN LOS ANGELES MEAT MARKET TO CHECK FOR TENDERNESS.

K. IT IS ILLEGAL TO ALLOW A RAIN PUDDLE TO REMAIN IN YOUR FRONTYARD FOR MORE THAN TWELVE HOURS IN LAKE CHARLES, LOUISIANA.

L. IT IS ILLEGAL FOR PEOPLE TO APPEAR ON A STREET IN BRADFORD, CONNECTICUT, UNLESS COVERED FROM SHOULDER TO KNEE.

ACTIVITY C: Brainstorming Present Laws Reflecting Values

rocedure:

Brainstorm with the class those laws existing today that reflect our values (laws regarding gambling, prostitution, pornography, alcohol, drug use, alcohol use, the death penalty, etc.) Write the responses on the chalkboard and discuss why these are a reflection of values. Which of these laws do students feel may change by the year 2000? Which will change first, the law or values?

ACTIVITY D: Mock Referendum

Procedure:

To illustrate the range of values within the class, stage a "mock referendum". Explain to the students that in a referendum the people actually vote on proposed laws or ordinances. The purpose of this mock referendum is to determine whether or not the local government will continue to regulate morality. Instruct the students to answer yes or no to the following propositions. (The propositions are available on a separate sheet which may be reproduced.

After all notes have been made and tallied, discuss with the students the range of values illustrated. Ask students to explain why such diversity exists in our society.

ACTIVITY D: Student Handout

1. THE STATE WILL NO LONGER REGULATE THE SALE OR DISTRIBUTION OF ALCOHOL.
2. ALL LAWS PROHIBITING ANY FORM OF GAMBLING SHALL BE REPEALED.
3. THE USE AND SALE OF MARIJUANA WILL BE DECRIMINALIZED.
4. ALL STATE AND MUNICIPAL LAWS, PENALIZING PROSTITUTION WILL BE REPEALED.
5. PORNOGRAPHIC MATERIALS MAY BE SOLD AND DISTRIBUTED WITHOUT INTERFERENCE FROM THE LAW.

ACTIVITY E: Values Clarification

Procedure:

At various locations in the classroom, post the following signs:

AGREE MILDLY AGREE NEUTRAL

MILDLY DISAGREE DISAGREE

Present the following statements to the class. According to the student's opinion on each, have them go to the appropriate sign in the room which illustrates their attitude toward the statement. After all students have made a selection, ask various students why they are located where they are.

a. Juvenile offenders should be treated as adults for the commission of serious crimes.
b. The dealth penalty should be imposed for all cases in which one is convicted of murder.
c. Abortion should be legalized under any circumstances.
d. The insanity plea should be made illegal as a defense mechanism for alleged murderers.
e. The only people in New York State that should be allowed to have guns in their possession are police officers and military personnel.

OBJECTIVES:

. Students will understand how and why the meaning and application of justice has been able to adapt to different periods of tme.

2. Students will comprehend the relationship between laws and values, and how each is reflected within the other.

3. Students will develop attitudes of critical thinking and techniques of problem-solving.

4. Students will develop speaking and writing skills.

INFORMATION FOR TEACHERS:

The intent of this section is the application of justice in the United States, although to understand it, justice from other periods of time must be considered. Following are some examples, (the instructor may want to add on or delete from this list).

a. Hammurabi Code - "an eye for an eye"
b. Biblical times - stonings, crucifictions
c. Feudalism - trial by oath, compurgation, ordeal, torture
d. Salem witch trials - hangings, burnings
e. Later colonial period - banning, shunning
f. U.S. Western History - "hanging judges"; vigilantes; lynching
g. Modern US History - court system, jury trials

VOCABULARY:

banning
capital punishment
Hammurabi Code
jury trial
lunching
plea bargaining

shunning
stoning
trial by compurgation
trial by aoth
trial by ordeal
vigilantes

ACTIVITY A: Brainstorm Applications of Justice Historically

Procedure:

Write the following statement on the chalkboard: "The way justice has been applied historically has changed over the years."

1. Brainstorm with the students how this has occurred. List the various student reponses on the board. After an adequate number of responses have been made, ask why there has been such a noticeable change.

ACTIVITY B: Rewritng of Amendments

Procedure:

Have the students read Amendments 5,6,7, and 8 of the constitution. For each, they are to re-write it in their own words. When this assignment is completed, allow for individual responses as to what they feel each implies as it relates to process of jury trials and the dispensation of justice.

ACTIVITY C: Round Table Discussion

Procedure:

In a "round table" format, discuss the following:

1. From what sources do students get their concept of the criminal justice system and prison life? (TV, personal experience, former inmates)
2. Does justice triumph or the innocent go free?
3. Is plea-bargaining a subversion of justice or an expedient way of bringing as much justice to as many persons as possible. (Could be broken down to provide 3 different activities).

ACTIVITY D: Guest Speaker

Procedure:

Invite an attorney to speak to the class to help them develop an understanding of Supreme Court decisions relating to capital punishment.

ACTIVITY E: Student Research

Procedure:

Research the current position of dealth penalty legislation in New York State and discuss what impact the social and political climate has on the status of such legislation. ORAL OR WRITTEN PRESENTATION.

ACTIVITY F: Advocate Program on Death Sentences

Procedure:

Advocate Program: "Should New York State Carry Out Death Sentences?"

1. See the attached guide, which includes a program format and information relative to the issue as it appeared on The Advocates on PBS. It is taken from The Advocates in Brief, A Guide For Teachers.
   Using the format from the above, students may be assigned to research topics and carry out the various roles.

2. Other possible pertinent topics which may be investigated:
   a. Should the Congress of the United States have the power to overrule Supreme Court decisions?
   b. Should the opportunity for plea-bargaining be reduced in serious crimes?
   c. Should the use of marijuana be legalized?
   d. Should public institutions be permitted to give preferential treatment to minorities in hiring and admissions?

Activity F - Student Handout #1

Program Format

	Moderator:	Introduction of the question and the WITNESSES.
Pro	Advocate:	Position statement.
Con	Advocate:	Position statement.
Pro	Lead Witness:	Presentation of testimony in response to direct questioning by PRO ADVOCATE. Cross-examination by CON ADVOCATE.
Con	Lead Witness:	Presentation of testimony in response to direct questioning by CON ADVOCATE. Cross-examination by PRO ADVOCATE.
Con	Rebuttal Witness:	Presentation of testimony to CON ADVOCATE. Cross-examination by PRO ADVOCATE.
Pro	Rebuttal Witness:	Presenation of testimony to PRO ADVOCATE. Cross-examination by CON ADVOCATE.
Pro	Advocate:	Closing remarks.
Con	Advocate:	Closing remarks.
	Moderator:	Conclusion of the debate.

Should your state carry out death sentences?

Background

For 556 persons in the U.S., the question of capital punishment is a life or death issue. Those are the inmates living on death row in the nation's prisons. Today the number of inmates is heavily concentrated in three states — Florida with 134, Texas with 122, and Georgia with 68. The execution of John Spinkelink in Florida's electric chair in 1979 was only the second in twelve years. (Gary Gilmore's death, in Utah in 1977, is dismissed as suicide since he refused to allow efforts to save himself.)

Death penalty abolitionists have reduced executions from a highpoint of 200 in a y[illegible] the 1930's to very few in the 1960's (one in 19[illegible] and two in 1967) before a moratorium went into effect. The stopping of executions can, in part, be traced to the efforts of the NAACP (National Association for the Advancement of Colored People) which found discriminatory application of the penalty.

In the 1972 *Furman v. Georgia* suit, the U.S. Supreme Court struck down the death penalty as "cruel and unusual punishment," ruling that because the sentence was applied inconsistently, it did not meet equal protection requirements of the Constitution. The court left open the possibility that states could pass laws to guarantee fair judicial process before carrying out executions. Several states enacted legislation to conform to the Supreme Court decision and some of those laws have been upheld.

Thirty-seven states now have capital punishment statutes. The goal of the laws is to deter persons from violent crime. In the U.S. today there is virtually no fear of death by judicial means and criminals have little reason to expect more than long prison sentences. There is no statistical evidence to show that the fear of death te[illegible] actually protects potential victims. On the ot[illegible] hand, there has been an increase in violent crime since the 1967 moratorium.

Statistics of neighboring states show similar homicide rates whether the state has longstanding death penalty laws (New Hampshire) or none at all (Maine).

Death Sentencing

The death penalty is linked to the idea of retribution which is similar to the notion of an "eye for an eye". An injury done to one individual is an injury to the community as a whole and society should enforce just punishment. As a result, retribution is mentioned as an appropriate measure for certain spectacular crimes, assasination for example.

The most recent application of death sentences has been aimed at the punishment of particular crimes, such as kidnapping or for killing certain types of victims such as a police officer (1969). Other executions have resulted from a variety of crimes: narcotics sold to a minor (1946), espionage of atomic secrets (1946), armed robbery (1955), rape (1964), and narcotics peddling (1970).

Justice has made mistakes, and capital punishment is irreversible. When death sentences are an option, many juries will refuse to convict. As a result, with 20,000 murders a year, the death row population is surprisingly low. The disparity is partially due to plea-bargaining, by which a district attorney and defense attorneys make a "deal" for a guilty plea from the accused in return for reducing the charge. These cases do not go to jury trial although a judge must approve the bargain and determine the sentence. It is impossible to try all cases in court so, on a practical level, plea-bargaining saves time and money. However, since it allows the prosecutors great discretion and is influenced by the power and personalities of lawyers and justice officials involved, it can have discriminatory results.

Briefing the Class

Americans seem to prefer having capital punishment on the law books for various crimes yet dislike carrying out the punishment when it comes time to execute. Teachers might explain this paradox to students before viewing the debate. Death sentences were handed down regularly during the moratorium on executions from 1967 to 1979. It appears that courts will continue to pass such sentences, legislatures will allow the laws to remain, and the death row population will continue to climb. The program confronts the fate of those prisoners now facing execution.

Teachers might hold class discussion on the linkage between race, poverty, and crime. The claim that courts administer the majority of death penalties to the poor and minorities does not automatically suggest the penalty should be abolished — as long as it is not applied *because* of race or economic status. Discrimination is a sociological phenomenon and our legal system reflects the society from which it comes.

Pro Arguments

1. A society must protect itself from violent criminals.

Eliminating a murderer by execution is fair retribution and saves potential future victims.

Punishments must match offenses with the severest penalty reserved for the worst crimes.

2. Societies must establish deterrents against crime.

A moral community demands standards of behavior by assigning punishment to violations of its norms.

Death deters persons from vicious crime more than prison.

3. Death is a just punishment.

The higher distribution of death sentences among the poor and minorities is a social problem, not a legal one.

Juries are reluctant to recommend maximum penalties and respond only to aggravated circumstances.

Revised, constitutional statutes provide protections and insure justice for condemned defendants.

Con Arguments

1. Execution is not a morally defensible response to crime.

Mistakes are frequently made in criminal law and an execution is irreversible.

Capital punishment is lethal vengeance which brutalizes the society that tolerates it.

2. Capital punishment has not been shown to deter crime.

Deterrence doesn't work against the majority of crimes which are crimes of passion.

Hired murderers take the risks of the criminal justice system, whatever the penalties.

3. Death penalties are unjust.

Without consistent sentencing, it is discriminatory to use death sentences occasionally.

Death sentences are usually delivered against the poor who cannot properly defend themselves.

The problems of social inequity should be solved before resorting to capital punishment.

Debaters

Moderator: Michael Dukakis

Pro Advocate: Avi Nelson
Radio and television commentator.
Pro Witness: Arthur Shuman, Jr.
Philadelphia attorney, prosecutor and defender of accused murderers for ten years.

Pro Witness: Dale Volker
New York State Senator (R-Buffalo). Introduced a bill in New York to restore the death penalty in that state.
Con Advocate: Margaret Marshall
Boston attorney.

Con Witness: Don Reid
Publisher Emeritus, Huntsville Item, Texas. Witness to 180 executions.
Con Witness: Alan M. Dershowitz
Law Professor, Harvard Law School.

The Debate

Pro Witness, Shuman

Questioning by Nelson

Shuman tells why he thinks capital punishment is essential to society's protection both directly (eliminating the murderer) and indirectly (as a deterrent). He makes distinctions between murders, recommending death for the worst kinds. He denies that innocent persons are ever executed.

Cross Examination by Marshall

Advocate Marshall gives research evidence indicating death penalties laws have not deterred capital crime. Mr. Shuman rejects the studies saying comparisons between states must consider the make-up of the population. He claims more black persons are on death row because they commit more murders.

Con Witness, Reid

Questioning by Marshall

Reid agrees that the courts apply the death penalty to only a small percentage of capital offenses and the major share go to minority offenders. His experience with inmates convinces him that awareness of the death sentence did not deter criminals.

Cross Examination by Nelson

Advocate Nelson coaxes the witness to agree that punishment deters crime and thereby protects society. Reid protests the effectiveness of *capital* punishment as a deterrent. He denies the state has any more right to take a life than did the murderer.

Con Witness, Dershowitz

Questioning by Marshall

Dershowitz asserts that people are sentenced to death because of their socio-economic status or the kinds of victims they kill. He supplies data to support his position that the death penalty is applied discriminately against blacks. He further states that the quality of legal service a defendant hires is a deciding factor in death penalty sentencing.

Cross Examination by Nelson

Raising the case of Adolph Eichman, Advocate Nelson suggests that society should express its sense of moral outrage and demand retribution for certain crimes. Dershowitz maintains that the severest penalty a moral society should inflict is less than the death the murderer inflicted on the victim.

Pro Witness, Volker

Questioning by Nelson

Senator Volker explains what the new death penalty statutes do to insure fair treatment and justice. He testifies that minority populations favor death penalties because they are as often the victims as the perpetrators of violent crimes.

Cross Examination by Marshall

Advocate Marshall focuses on the racial disparities among death-row inmates in Southern states but agrees with Volker that the statutes have improved. They disagree about whether the percentage of black executions is statistically proportional to the population.

OBJECTIVES:

1. Students will be able to define judicial review and give examples..
2. Students will understand the procedure used by the U.S. Supreme Court for appeal.
3. Students will be able to analyze Supreme Court cases using the case study sheet.
4. Students will be able to illustrate changes in interpretation of legal issues over time.
5. Students will be able to describe the role of the Supreme Court in the judicial process.

INFORMATION FOR TEACHERS:

1. Although the Supreme Court may hear cases under either original jurisdiction or appellate jurisdiction, the vast majority of the cases reach the Court on appeal. The two main routes of appeal through which cases reach the Court are as follows:
   a. First are cases which arise out of the constitutionality of federal laws and treaties. Usually these cases begin in the lower level of the Federal Court system and work their way up.
   b. Second are cases which result from the actions of state officials and state courts. If a state law is argued to be unconstitutional, it is first reviewed by the courts of the state in question, before being considered for review by the Supreme Court.
2. The next step in the appellate process also involves two possible routes:
   a. After a case has been heard by the highest state court, or by an appeals court in the federal system, the party appealing the case may apply to the Supreme Court for a writ of certiorari, and to be granted, it must be approved by at least four of the nine justices.
   b. The Court is required to hear appeals from lower court decisions that declare a Congressional act unconstitutional.
3. In a typical year, the Court receives approximately 5000 petitions for review and agrees to less than 200 of them. The Court generally tends to choose for review cases which involve:
   a. A basic constitutional principle;
   b. An important question of federal law;
   c. A conflict between state and federal law.
4. Although the power of judicial review makes the Court the final authority on the Constitution, even those decisions which pertain to the meaning of the Constitution are rarely final. The Court's interpretation of the Constitution changes as the times, values, and justices change.

VOCABULARY:

appellate jursidiction
civil rights
concurring opinion
dissenting opinion
judicial review
majority opinion
original jurisdiction
writ of certiorari

ACTIVITY A: Case Studies

Procedure:

The following cases are offered to illustrate those situations in which the United States Supreme Court has reversed the decision of a prior court. The instructor may desire to use the format "Case Study Sheet", which may be reproduced. For teacher/student use, a summary of these cases have been included. It is not mandatory to use all four case studies.

1. Have students review the cases of Plessy vs. Ferguson, 163US.537 (1896) and Brown Vs. Board of Education of Topeka, 347 US 483. (1954) - Discrimination
    a. Using a separate "Case Study Sheet" for each case, the student should follow the format. Under the section headed "Student's Comment", the student should give his opinion regarding the Court decision.
    b. After sheets have been completed for each case, the instructor may desire to brainstorm the following:
        (1) How do you explain the change in the Court's opinion?
        (2) What factors seem to have been involved?
    c. Directions are the same for each pair of cases under consideration.

2. Have students review the cases of Harris vs. United States, 331 US. 145 (1947) and Chimel vs. California, 395 U.S. 752 (1969), Search and Seizure.

3. Have students review the cases of Terminiello vs. Chicago, 337 U.S. 1 (1949) and Feiner vs. New York, 340 U.S. 315 (1951), - Speech.

4. Have students review the cases of Minersville School District vs. Gobitis, 310 U 586 (1940) and West Virginia State Board of Education vs. Barnette, 319 U.S. 624 (1943) - Religion.

ACTIVITY A: Case Study #1

Fact Sheet: Plessy vs. Ferguson, 163 U.S. 537; 16 S. Ct. 1138; 41 L.Ed. 256 (1896)

In 1892, Plessy, a native of Louisiana (having seven-eighths Caucasian and one-eighth African blood), boarded a train from New Orleans to Cavington in the same state. He was ordered out of the car reserved for whites to a Negro car by the conductor. When he refused to obey the order he was forcibly jailed and convicted of violation of a state law of July 10, 1890, requiring separate accommodations for white and colored passengers on railroads. An informiation (formal accusation of a crime) was filed against him for the violation, and he filed a demurber (motion to dismiss) against the judge of the Criminal District Court, Ferguson, When relief was denied him in the state court, Plessy appealed on a writ or error (mistake made by the judge).

The question considered by the Court was: Does the Louisiana statute providing "equal but separate" railway carriages for the whites and colored violate the Thirteenth and Fourteenth Amendments?

Court Decision No

Reason: The object of the law is to ensure absolute equality of both races before the law. This is, nowever, a political and not a social equality. The case hinges on the question of whether or not this is a reasonable regulation. Thus established usages, customs, and traditions, as well as the preservation of public peace and good order must be considered. Using this standard, separate public consequences are not unreasonable nor contrary to the Fourteenth Amendment.

Fact Sheet: Brown vs. Board of Education of Topeka, 347 U.S. 483; 74 S. Ct. 686; 98 L. Ed. 873 (1954).

The states of Kansas, South Carolina, Virginia, and Delaware had sent a series of cases to the Supreme Court. All the cases involved the same basic problem, Negro minors, through their legal representatives, seeking court aid in gaining admission to the public schools of their communities on a nonsegregated basis. The Kansas case was chosen as the nominal leading case. The Negro children in question were of elementary or high school age or both. Segregation requirements were on a statutory and state constitutional basis except in Kansas where only statutory provisions were involved.

The question considered by the Court was: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities.

Court Decision: Yes

Reasons: Segregation of white and colored children in public schools has a detrimental effect upon the colored children... it "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.... We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs.... are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

ACTIVITY A: Case Study #2

Fact Sheet: Harris vs. United States, 331 U.S. 145; 67 S. Ct. 1098; 91 L. Ed. 1399 (1947)

Geroge Harris was arrested for using the mails for cashing a forged check for $25,000 in a scheme to defraud. A second warrant for his arrest was issued on the charge that he had caused the forged check to be transported in interstate commerce, a violation of the National Stolen Property Act. F.B.I. agents, under the authority of the two warrants, arrested Harris at his apartment. After his arrest in the living room, the entire apartment was searched. As the search neared an end, a sealed envelop marked "Geroge Harris, personal papers" was found in a bedroom. Found in the envelope were eight Selective Service Notice of Classification cards and eleven Registration Certificates. Using this evidence, he was convicted of unlawful possession, concealment, and alteration of said cards. Harris argued that the evidence had been obtained by means of unreasonable search and seizure, in violation of the provisions of the Fourth Amendment, and that to permit the introduction of such evidence would be in violation of the self-incrimination clause of the Fifth Amendment.

The question considered by the Court was: Was this an improper seizure since he (Harris) was indicted for and convicted of a crime different from the one for which the search warrants were issued?

Court Decision: NO

Reasons: The Fourth Amendment does not require the authority of a search warrant for every valid search and seizure. Search and seizure may be conducted with every lawful arrest... under appropriate circumstances, the premises under the immediate control of the one arrested may be searched. In this case, the control extended to the other three rooms of the apartment, as well as the living room, where the arrest was made.

In this case, agents entered the apartment under lawful authority. The search was not a general exploratory search, but was directed toward the means by which the crimes had been committed. Likewise, the objects sought and those actually discovered were proper objects of seizure. Nor was it important that the draft cards were not related to the crimes for which the arrested party was arrested. They were illegally possessed property of the United States.

"If entry upon the premises be authorized and the search which follows valid, there is nothing in the Fourth Amendment which inhibits the seizure by law enforcement agents of government property of possession of which is a crime, even though the officers are not aware that such property is on the premises when the search is initiated." The evidence so obtained does not violate the petitioner's rights under the Constitution.

Fact Sheet: Chimel vs. California, 395 U.S. 752; 89 S. Ct. 2034; 23 L. Ed. 2d 685 (1969)

The entire home of Chimel in Santa Anna, California was searched by three police officers. They had a warrant authorizing his arrest for the burglary of a coin shop but there was no search warrant. His wife admitted the officers to the house. Some items taken from the house at this time were admitted into his trial. He was convicted.

The questions considered by the Court was: Can the warrantless search of an entire house be justified under the Fourth Amendment as incident to an arrest?

Court Decision: NO

Reason: Such a search is unreasonable and thus contrary to the Fourth Amendment. An arresting officer may search the person arrested in order to remove any weapons the prisoner might seek to use and to seize any evidence on the arrestee's person in order to prevent its concealment or destruction. Included here is the area from within which the prisoner might gain possession of a weapon or destructible evidence, the area under his immediate control.

ACTIVITY A: Case Study #3

Fact Sheet: Terminillo vs. Chicago, 337 U.S. 1; 69 S. Ct. 894; 93 L. Ed. 1131 (1[illegible])

Terminillo, known for his racist and religious prejudices held a meeting held in an auditorium which attracted a crowd of some 800, many of them sympathizers. At the time of the meeting, a crowd of approximately 1,000 milled around outside the auditorium. Disorder occurred both inside and outside the auditorium as bricks and bottles were thrown, and the police had a difficult time with crowd control. Words were heatedly exchanged with Terminillo calling people, "slimy scum", "snakes", and "bedbugs", while the people on the outside responded with "Terrorists" and "Hitlers". After completion of the speech, Terminillo and seventeen people from the outside group were arrested. Charged with a breach of the peace, he was found guilty after the judge charged the jury that a breach of the peace includes speech which "stirs the public to anger, unites dispute, brings about a condition of unrest, or creates a disturbance". He appealed the conviction.

The questions considered by the Court was: Should a political speech in an auditorium which results in a riot subject the speaker to arrest for breach of the peace?

Court Decision: No

REASON: By a 5 to 4 decision, the Court concluded that the trial judge's instruction to the jury was too broad, and, therefore, the conviction was reversed. The majority opinion stated: "Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed serve its best purpose when it induces a question of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises for above public inconvenience, annoyance, or unrest."

Fact Sheet: Feiner vs. New York, 340 U.S. 315; 71 S. Ct. 303; 95 L. Ed. 295 (1951)

Irving Feiner, a student a Syracuse University, addressed an open-air meeting of some seventy-five people, black and white. The crowd was on a sidewalk and many spilled out onto the street. He was urging the crowd to attend a meeting to be held that night on civil rights. During the course of his speech, he made derogatory remarks about the Mayor of Syracuse, some local politicans, President Truman, the Governor of New York, and the American Legion. He also appealed to the blacks in the crowd, telling them they did not have equal rights and should take up arms to fight for their rights. When police officers arrived, their first concern was pedestrian and vehicular traffic, but the crowd began to become restless and mill about. After one member of the crowd said, "If you don't get that S.O.B. off, I will go over there and get him off myself," one of the officers approached Feiner and asked him to stop. Feiner refused, and after several requests by the police officers, he was arrested for violation of the Disorderly Conduct Law. He was charged with "ignoring and refusing to heed and obey reasonable police orders... to regulate and control said crowd and to prevent a breach or breaches of the peace and to prevent injury to the public generally." He was convicted and three lower courts in New York upheld his conviction.

The question considered by the Court was: If the police stop a lawful assembly when it passes the limits of persuation and undertakes incitement to riot, is this contrary to the right of free speech as guaranteed by the First and Fourteenth Amendments?

Court Decision: No

Reason: The officers making the arrest were concerned only with the preservation of law and order and not with the supervision of Feiner's views and opinions. The deliberate defiance of Feiner and the emminent danger of reaction in the crowd constituted sufficient reason for state police action. The guarantee of free speech does not include license of incitement to riot. Moreover, the state court's approval of the action of the local police was entitled to the utmost consideration.

ACTIVITY A: Case Study #4

Fact Sheet: Minersville School District vs. Gobites, 310 U.S. 586 (1940)

Lillian Gobites, aged twelve, and her brother, aged ten were Jehovah's Witnesses. The local Board of Education of the Minersville, Pennsylvania School District required both teachers and pupils to participate in a daily school exercise of saluting the national flag. As part of the ceremony, the right hand was placed on the breast and the following pledge was made in unison:

> "I pledge allegiance to my flag, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all."

While the words were being spoken, both teachers and pupils extended their right hands toward the flag. Having been brought up conscientiously to believe that such a gesture of respect for the flag was forbidden by scripture, the children refused to take part in the daily ritual.

The question considered by the Court was: Does the requirement of participation in such a ceremony infringe without due process of law the liberty guaranteed by the Fourteenth Amendment?

Court Decision: No

Reason: The Court decided that although religious liberty is an individual and precious right, each citizen also has political responsibilities which protects these rights. A state may make mandatory ceremonies for all children to develop a spirit of patriotism under Amendment 10 of the Constitution. They also decided that to allow dissenters not to take part in such a ceremony would weaken school discipline.

Fact Sheet: West Virgina State Board of Education vs. Barnetta, 319 U.S. 624 (1943)

Following the decision of the Supreme Court in Minersville School District vs. Gobitis, 310 U.S. 586, the West Virginia legislature amended its statutes to require all schools to conduct courses in history, civics, and the Constitution. The Board of Education went further and required a salute and a pledge of allegiance to the flag. Failure to conform was insubordination, dealth with by expulsion. Readmission was denied by statute until compliance. A group of children of the Jehovah's Witnesses persuasion refused to obey the flag salute law on the ground that their religious beliefs forbade them to do so, and that God's law was superior to any governmental law. The students in question were expelled and state officials threatened to send them to reform schools for juvenile delinquents. Their parents were prosecuted and threatened with prosecutions for causing delinquency.

The question considered by the Court was: Is the West Virginia statute contrary to the First and Fourteenth Amendments?

Court Decision: Yes

Reason: The Court ruled that freedom of religioun and expression cannot be restrained when such are harmless to others and to the state. They felt that the actions by the Board of Education, in compelling the flag salute and pledge exceeded their powers and was in conflict with the spirit of the First Amendment.

In making their decision, the Court overrruled the prior Court decision in Minersville School District vs. Gobitis.

ACTIVITY B: Analysis

PROCEDURE:

This activity may lend itself to brainstorming, assacratic approach, or debate procedure.

> Chief Justice Charles Evans Hughes once observed:
> "The Constitution means what the judges say it means."

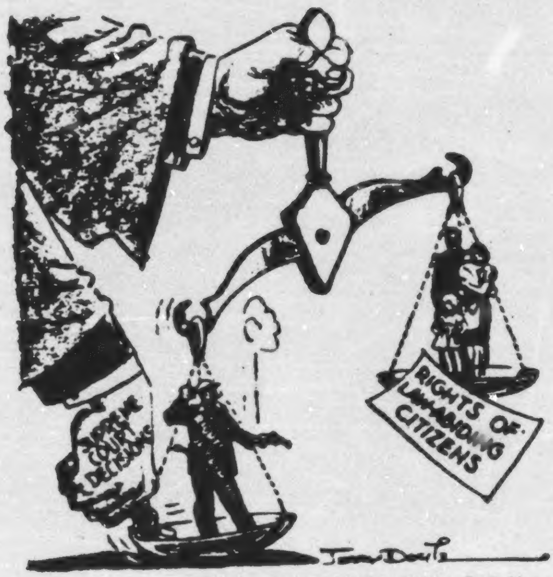
Do you agree with Hughes? Do you think this philosophy is appropriate in a democracy? Explain.

ACTIVITY C: Cartoon Analysis

ocedure:

1. Reproduce cartoon F-1: "Too much Judicial Pressure on the Scales of Justice" (student handout or transparency)

   Instructor may desire to have students give oral responses or written analysis of the meaning of the cartoon. They may also be asked to determine if they agree with the cartoon's meaning.



Doyle in *The Philadelphia Daily News*

"TOO MUCH JUDICIAL PRESSURE ON THE SCALES OF JUSTICE."

APPENDIX

Community Resources

The use of people and agencies involved in the law in our communities can be very valuable in developing a law course or law-related lessons. A list has been compiled for your convenience. It is not all inclusive and should expand as you find new resources.

Cortland County:

Court:

Charles J. Mullen, Judge	753-5001
Isabel L. Coon, Chief Clerk	753-5013
Richard J. Shay, District Attorney	753-5008
James J. Woods, Public Defender	753-5046

Agencies:

Sheriff's Department	753-3311
Duane Whitman, Sheriff	
Roy Barrows, Undersheriff	
Lt. Lee Price, Road Patrol	

Probation Department:	753-5019
M. Frances Newman, Director	
James Cunningham, Supervisor	

Cortland County Bar Association:

City and Town Courts:

Cortland	Lynne P. Dorset, Judge	753-1811
Cortlandville	Donald F. Eaton, Judge	756-2352
Homer	Philip F. Brong	749-4581
Marathon	Donald Elsenheimer	849-3849
Willet	Benno G. Spiehs	863-3261

AV MATERIALS

The following list of AV materials available through the Cortland-Madison BOCES film and videotape library has been compiled for your convenience in developing further lessons.

Video-Cassettes:

VO-0082	Basic Law Terms
V5-1277	Caught In A Rip-Off
V0-0808	Free Press vs. Fair Trial by Jury: Sheppard Case
V0-0980	Justice Under Law: Gideon Case
V5-6409	Peach Gang, The
V5-1160	Potrait of a Vandal
V5-1132	Scared Straight
V0-0306	United States Supreme Court
V0-0312	Lottery

Filmstrips and Cassettes:

Street Law: A Student's Guide to Practical Law

16mm Films:

832-39	Busted
832-431	Caught In A Rip-Off
832-690	Constitution
833-207	The Glass House
833-208	The Glass House
833-209	The Glass House
833-248	In Search of Justice
832-95	Interrogation and Counsel
832-94	Justice, Liberty and Law
833-157	Legacy of a Dream
832-96	Search and Privacy
833-201	Shoplifting: Sharon's Story
832-93	Speech and Protest
831-350	There Is A Law Against It
831-351	This Is Fraud
832-217	Politics, Power and the Public Good
832-218	Pride and Principle
832-219	Right to Live, Who Decides
832-222	Trouble With The Law
832-225	Whether To Tell The Truth

BIBLIOGRAPHY

The following books, magazines, and simulation games are suggested to help the teacher in acquiring helpful supplementary information for use with this guide or in developing further lessons on the law.

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GAME

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USA Today, contains excellent "opinion" section that lends itself well to debate on legal issues.

Update On Law-Related Education, American Bar Association, Order-Billing-YEFC, 1155 E. 6 Street, Chicago Illinois 60637.

This publication is a must for current information and teaching strategies in Law-Related Education. Subscription price of $7.50 per year to above address.

GLOSSARY

actions	The behavior of a person or organization.
administrative law	Rules, regulations, and policies carrying the force of law and made by a commission or agency established by legislation.
adversary system	The almost universal method of American law, in which a judge or jury acts as the decision maker between opposite side in a hearing or trial.
anarchism	A form of government in which there is no effective government with no rules or laws.
anachronistic laws	Laws which are out of their proper frame of time. ie: have lost applicability
apartheid	South African policy that separates the various races there. There are four major classifications (Europeans, Asians, Coloureds and Bantus)
appellate jurisdiction	The power and authority of a higher court to take up cases that have already been in a lower court for trial and the power to make decisions about these cases without holding a trial.
apprehension	The capture or arrest of a person on a criminal charge.
arraignment	To bring a defendant before a judge to ear the charges and enter a plea
arrest	The official taking of a person to answer criminal charges. This involves at least temporarily depriving the person of liberty and may involve the use of force.
assault	An intentional show of force or a movement that could reasonably make the person approached feel in danger of physical attack and harmful physical contact.
bail	Money or property put up to allow the release of a person in jail until the time of trial.
bail bond	A written statement of debt tht is put up by an arrested person and others who back it up. It promises that the arrested person will show up in court or risk losing the amount of the bond.
bailiff	A sheriff's deputy, or low level court official who keeps peace in a court.
banning	Process of expelling persons from their society: driving away or dismissing.
battery	Any unlawful, unconsented to physical contact by one person upon another. Actual injury is not necessary.
booking	The writing down, by the police, of facts about a person'a arrest and charges along with identification and background information.

breathalyzer	A test to discover the percentage of alcohol in the blood of a person arrested for drunk driving.
bulldogging	Prison jargon for extortion.
burden of proof	Requirement that to win a point or have an issue decided in your favor in a lawsuit you must show that the weight of evidence is on your side, rather that "in the balance" on that question.
capital punishment	The death penalty for a crime.
charged	To be formally accused of a crime.
civil law	Law based on one document or code rather than a combination of many laws and judicial opinions. Actions are taken to enforce a right or gain payment for a wrong.
civil liberties	The rights of all citizens that are guaranteed by the constitution.
common law	The system of law based on court decisions instead of laws passed by a legislative or similar body.
civil rights	The rights of all citizens that are guaranteed by the constitution.
community service	In lieu of incarcertion convicted criminals must perform work which will benefit society through various community organizations (ex. hospitals, youth groups, rehabilitation centers, etc.).
complaint	The first main paper filed in a civil lawsuit - includes a statement of the wrong or harm done to the plaintiff by the defendant.
concurrent sentence	Prison terms that run at the same time.
concurring opinion	Opinion in which a judge agrees with the result reached in an opinion by another judge, but not necessarily with the reasoning that the other judge used to reach the conclusion.
contract	An agreement that affects the legal relationships between two or more persons.
constitutional rights	Those personal freedoms which are contained in U.S. Constitution, including its Amendments.
corporation law	Law that deals with how a corporation is set up and how it functions.
corrections	Refers to the concept of rehabilitation as well as punishment of convicted persons.
crime preventional	Programs designed to eliminate the causes or conditions that lead to crime.
criminal	Having to do with the laws of crimes and illegal conduct.

criminal law	The granch of law concerned with actions taken by the government against a person accused of committing a crime.
criminology	The study of the causes, prevention, and punishment of crime.
cross examination	The questioning of an opposing witness during a trial. Leading questions may be asked.
cruel and unusual punishment	Punishment, by the government that is prohibited by the constitution.
cumulative sentence	An additional prison term given to a person who is already convicted of a crime, the additional term to be served after the first one is finished.
custody	A general term meaning various types of care and keeping. For example, parents normally have legal custody of their children, a warden has custody of prisoners, and a person has custody of a book loaned by another.
decarceration	A sentence which avoids placing a convicted criminal in jail or prison on a full time basis.
damages	Money that a court orders paid to a person who has suffered a loss or injury by the person whose fault caused it.
decriminaliztion	The act of making no criminal. Example making a criminal offence not criminal by changing it from a felony or misdemeanor to an infraction. Also can refer to the rehabilitation of a person.
defamation of character	Injury to a person's character or reputation by false or malicious statements - includes both libel and slander.
defendant	A person against whom a legal action is brought whether civil or criminal.
deliberate	To carefully consider, discuss, and work towards making a decision.
democracy	A form of government in which the people participate actively in the government, in which they vote on everythin.
deterent	A preventative to crime.
deterrence	The belief that punishing wrongoers will discourage the offender from committing a future crime, or discourage a potential offender from committing a crime knowing the consequences.
direct examination	The first questioning in a trial of a witness by the side that called that witness.
discrimination	The failure to treat equals equally.
dissenting opinion	A judge's written formal disagreement with the majority of the judges in a lawsuit.

due process	In a criminal proceeding (or a chool discipline situation), all of the proper steps which are guaranteed a person under law.
enforcement	Carrying out the commands of a law.
equal protection	The right of a person to be treated equally to anyone else in a similar legal situation.
Equal Protection of Laws	A constitutional requirement that the government shall in no way fail to treat equals equally, set up illegal categories or justify treating persons unfairly, or give unfair or unequal treatment to a person based on that person's race, religion, etc.
equity	1). Fiarness in a particular situation; 2). A court's power to "do justice" where specific laws do not cover the situation.
evidence	All types of information (observations, recollections, documents, concrete objects, etc.) presented at a trial or other hearing, types: circumstancial, demonstrative, direct, hearsay, parole, probation, real estates, etc.
excessive power	The use of force and power beyond the limits necessary to control the situation.
exclusionary rule	Rule that illegally gathered evidence may not be used in a criminal trial.
Family Court	Court with jurisdiction over child abuse and neglect, support, paternity, custody, juvenile delinquency - also over domestic relations - divorce, separations.
family law	Law related to the home. For example, it is the branch of law that deals with divorce, custody, support, adoption, etc.
federal courts	Courts with jurisdiction over federal, criminal, and civil laws.
felony	A serious crime with a sentence of one year or more.
field test	A series of tasks given by an officer to a suspect on a DWI charge to determine suspected intoxication.
fine	The punishment of payment of a sum of money imposed by a court.
forgery	The crime of altering a writing or document with the intent to defraud.
Gitlow Doctrine	Supreme Court declaration that the prohibitions contained in the the First Amendment against the abridgement of free speech by the Federal Government were applicable to State Government as well, by virture of the due-process clause of the Fourteenth Amendment.
hearsay	Second hand evidence. Facts not in the personal knowledge of the witness, but a repetition of what others said, that are used to prove the turth of what others said.

half-way house	A program which allows a prisoner a time of transition from prison to freedom. The prisoner works in the community but lives in a restricted environment of a home at night and weekends.
Hammurabi Code	One of the oldest sets of laws, prepared in Babylonia almost four thousand years ago; justice based on principle of "an eye for an eye".
harrassment	Words or actions that unlawfully annoy or alarm another.
homicide	Killing of one human being by another.
impartiality	Not favoring one side over the other or prejudicing any of the facts or theories involved in a case.
imprisonment	A person convicted of a crime is sentenced to a term in prison. (See also, determinate sentence, interminate sentence, concurrent sentence).
In loco parentis	In the place of a parent; acting as a parent with respect to the care and supervision of achild; the power to discipline a child as a parent can.
incapacitation	The notion of protecting society by physically separating the criminal in a jail or prison from the community.
incarceration	Confinement to jail or prison.
indictment	A formal accusation of a crime, made against a person by a grand jury upon the request of a prosecutor.
initial appearance	See arraigment.
intermittent incarceration	Serving a sentence on weekends and holidays and being free to live a normal life on workdays.
international law	Law dealing with relatins betwen nd among nations.
investigation	The process of gathering information on evidence that leads to the arrest and prosecution of a person.
Jim Crow Laws	U.S. Laws written in the 1870's - 1890's which were discriminatory toward American blacks.
Judicial Review	A court's power to declare a statute unconstitutional and to interpret laws.
judge	The person who runs the courtroom, decides all legal questions, and sometimes decides the entire case.
jurisdiction	The persons about whom and the subject matters about which a court has the right and power to make decisions that are legally binding.
jury trial	Trial with a judge and jury, not just a judge. 1). A constitutional right which need only be requested in all criminal cases and in civil cases involving over twenty dollars.

just	1) Legal or unlawful; 2) Morally right; fair.
justice	Fairness in treatment by the law.
larceny	Unlawful taking and carrying away of property of another with intent to steal it.
law	1) That which must be obeyed; 2) A statute; an act of the legislature; 3) The whole boyd of principles, standards, and rules put out by a government; 4) The principles, standards, and rules that apply to a particular type of situation.
lawsuit	A civil action. A court proceeding to enforce a right between persons.
leading question	A question that suggests a desired response; for example, "Isn't it ture that you were in Boston all last week?" Leading questions are generally permitted on cross examination, but not on direct examination.
limited jurisdiction	The power and authority of a court to rule on cases of a lesser importance civil or ciminal also traffic violations local codes and ordinances.
lynching	Process of killing a person accused of a crime by mob action, as by hanging, without due process of law.
majority opinion	Judgment in which most of the judges in an apellate court agree.
manslaughter	Unlawful killing of a person without malice. Types: voluntary, involuntary.
maximum security prision	A prison or correctional system in which the prisoners are under heavy restrictions and having little freedoms, in which there are high wall and heavy-armed guards.
Media	The forms of communication (press, radio, television).
misdemeanor	A criminal offense less than a felony that is usually punishable by a fine or less than a year in jail.
municipal courts	Courts of limited jurisdiction, City, Town, Village courts.
Nuremberg Laws	German Laws written in 1935 which were discriminatory toward the Jews.
original jurisdiction	The power of a court to take a case, try it, and decide it. Where a case originates.
over charging	A practice of the police to list all charges possible against an individual at the time of arrest. Later these are used in plea bargaining.
parole	A release from prision before a sentence is finished, that depends on the person's "keeping clean" and doing what he/she is supposed to do while out.

parole board	A hearing panel whose purpose it is to determine whether or not individuals are appropriate candidates for parole.
parole officer	An officer of the court who is charged with supervision of the parolee.
patrol	To walk or go through or around for the purpose of guarding or protecting.
penal	Concerning a penalty - punishment.
penal code	A collection of federal or state criminal laws.
Philosopher King	According to Plato this type of person is to be ruler. This person is the wisest among men; he is not interested in money or power, neither is he acting out of ignorance or prejudice. He is the only one fit to rule.
plaintiff	A person who brings (starts) a lawsuit against another person.
plea	The defendant's formal answer to a criminal charge.
plea bargaining	Discussions between a prosecutor and a criminal defendant's lwyer in which the defense lawyer generally offers to have the defendant plea guilty in exchange for the prosecutor's agreeing to accept a plea to a less serious charge, to drop some charges or to promise not to request a heavy sentence from the judge.
police brutality	Use of excessive force against or physical or mental mistreatment of a suspect or committed person.
policing	Watching and controlling a person's behavior in the areas under supervision.
pornography	Obscene literature or art.
precedent	A previous court decision that will influence future similar cases.
presentment	A grand jury's charging a person with a crime that it has investigated without an indictment given to it by a prosecutor.
privacy	The condition of being removed from public view.
private law	Concerned with the rights and obligations of people in dealing with each other.
probation	Allowing a person convicted of a crime to stay out of jail under supervised conditions by a probation officer (ex. if the person "stays clean") A trial period in which a person enjoys freedom based on certain promises in behavior.
probation officer	An officer of the court who is responsible for the supervision of a probationer.
Probation Revocation Hearing	Court hearing held after a probationer has violated the conditions of probation; purpose of which is to determine if probation should be revoked and the probationer sentenced to jail.
probationer	A person free on probation.

property law	Law concerning the ownership of a thing, or law concerning the legal right to own a thing.
prosecutor	A public official who represents the government case against a person accused of a crime.
protection	The act of defending from attack, harm, or injury.
rape	The crime of a man imposing sexual intercourse by force or otherwise without legally valid consent.
recidivist	A repeat crimnal offender; a habitual criminal.
recidivism	The process of repeat offender.
rehabilitation	The assumption that criminals can be helped to overcome the social, educational, or psychological problems that caused them to commit crime.
requital	The act of [illegible]ming equivalent return for, as kindness, service, or injury. To make return to; compensate or repay in kind.
reserve discrimination	A form of discrimination in which government action that tries to correct past discrimination causes discrimination against another group. e.g. Affirmative action discriminates other groups.
reserve powers	The areas of authority which are left for the states to control. These powers were granted by the 10th Amendment.
restitution	Giving something back; making good for something. Restitution programs in some states make a convicted criminal pay back the crime victim in money or work.
restraint	The act of keeping something or someone in check.
retribution	A theory justifying criminal punishment on the basis that society must "get even" with wrong doers.
right to know	The right of society to know the facts.
rights of the accused	Referred to as the Miranda Rights - those rights which must be read to you upon arrest.
rules of evidence	Rules and principles about whether evidence can be admitted (accepted for proof) in a trial and how to evaluate its importance.
rule of law	A general statement that is intended to guide conduct, applied by government officials, and supported by an authoritative source.
selective enforcement	Often used by law enforcement agencies that are understaffed. To prioritize and enforce only the laws that are of most importance in maintaining order.
sentence	The punishment given to a person convicted of a crime.
shunning	Process of staying away from; avoiding contact with certain members of a society.

small claims court	Court with jurisdiction over demands for money or property of relatively small value, usually limited by law to no more than $1,000.00.
special jurisdiction	The power and authority of a court to rule on specific matters only. Ex. Family Court, Surrogate Court.
state courts	Courts with jurisdiction over state criminal & civil laws.
statute of limitations	A law that sets a maximum amount of time after something happens for it to be taken to court.
stoning	To hurl stones at; pelt or kill with stones.
summons	A writ informing a person of a lawsuit against him. It tells a person to show up in court at a certain time and place to present a case or risk losing the suit without being present.
surrogate court.	Courts with special jurisdiction over the probating of wills.
suspect	One believed by law enforcement officials to have committed a crime.
suspended sentence	A conviction of a crime followed by a sentence that is given formally, but not actually served.
testimony	Evidence given by a witness under oath.
theft	Stealing of any kind.
tort	A civil or private wrong, an injury outside of a contract resulting from a breach of legal duty.
totalitarianism	A form of government in which the law permits the government to intervene in the private affairs of people and restricts the rights of people.
Trial by Battle	Form of feudal justice in which accused and accuser fought a duel and the outcome determined guilt or innocence.
Trial by Compurgation	- (Oath-Taking) Accused and accuser each gether a group of people who swore that "their man" was telling the truth; similar to character witnesses in today's trials.
Trial by Ordeal	Accused carried piece of hot iron, or walked through fire, or put arm into boiling water; if wounds healed rapidly he was judged innocent, if not, he was guilty.
trial courts	The opposite of appellate courts, those that actually hold trials.
unconstitutional	A law (or any governmental action) which is contrary to what is allowed by the US Constitution; therefore, the law or action may no longer apply.
utilitarianism	The belief of providing the greatest happiness for the greatest number.

values	Things (beliefs, objects, ideas, etc.) which a person considers important and affects his actions; values also affect a society's laws.
values conflict	When the actions and values of one person (or organization, government) are directly opposed to the actions and values of another; legal values conflicts mean that each side's actions and values are supported by laws or constitutional rights.
vandalism	(malicious mischief) willful distruction of or causing damage to the property of another.
vigilantes	Group who take it upon themselves the unauthorized responsibility of interpreting and acting upon matters of law, public morality, etc.
violation	The breaking of a traffic law, a municipal code or ordinance which is punishable by a fine, forfeiture, or other penalty.
waive	Give up, renounce, or disclaim a privilege, right, or benefit with full knowledge of what you are doing.
work release program	Prisoners are allowed employment outside of prison or jail, but must return to confinement after work.
writ of certiorari	A judge's order which requires that a lower court send up the record of a case for consideration of appeal.